Supreme Court, U.S.
FILED
07-319 SEP 06 2007
OFFICE OF THE CLERK

No. ——

In The
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,

v.

ANDREW CHARLES TITELMAN,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

SHERRY A. QUIRK
Counsel of Record
Schiff Hardin LLP
1666 K Street NW, Suite 300
Washington, DC 20006
(202) 778-6400

CYNTHIA A. CHEATHAM
Parsons & Nichols
101 W. Main Street
Manchester, TN 37355
(931) 728-1316

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Does a court's decision to sever all contact between a parent and her children for a period of five years without notice and an opportunity to be heard violate the Due Process clause of the Fourteenth and Fifth Amendments?

2. Does a state court's custody decision that deprives a parent of all access to her children indefinitely, without a finding of unfitness by clear and convincing evidence, effectively terminate a party's parental rights in violation of the Fifth and Fourteenth Amendments of the Constitution?

3. Does the requirement by a lower court of a prohibitive monetary bond to be paid by an indigent parent as a prerequisite to being heard in court regarding visitation rights to her children violate the Fourteenth Amendment rights to procedural due process and equal protection?

4. Does a court violate the First, Fifth and Fourteenth Amendments when it deprives a parent of custody, visitation, or contact with her children for taking reasonable action based upon a belief, supported by facts, that her children need protection from abuse?

LIST OF PARTIES

1. Wendy Jane Titelman, Plaintiff and Petitioner

2. Andrew Charles Titelman, Defendant and Respondent

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PRAYER FOR RELIEF FROM OPINIONS BELOW 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

INTRODUCTION 3

THE DIVORCE PROCEEDINGS 5

THE CRIMINAL TRIAL 12

THE FINAL VISITATION ORDER 13

THE APPEAL 15

REASONS CERTIORARI SHOULD BE GRANTED 15

Page

I. The Denial Of All Access To Her Children Without Adequate Notice Or Opportunity To Be Heard For Five Years Violated Mrs. Titelman's Right To Procedural Due Process 17

II. The Court's 2006 Order Depriving Petitioner Of Any Access To Her Children Without A Finding Of Unfitness Constituted A *De Facto* Termination Of Her Parental Rights Without Clear And Convincing Evidence Of Unfitness 18

III. The Imposition Of A Prohibitive Monetary Requirement On An Indigent As A Predicate For Seeking A Hearing On Her Parental Rights Violated The Procedural Due Process And Equal Protection Clauses Of The Fourteenth Amendment 21

IV. Punishment By Termination Of All Contact With Her Children Based On Acts Of Good Faith Allegations And Reasonable Belief Supported By Facts That Her Children Are Victims Of Child Abuse Violated Her Constitutionally Protected Rights Under The First, Fifth and Fourteenth Amendments 24

CONCLUSION 28

APPENDIX ..... ia

TABLE OF AUTHORITIES

Page(s)

Cases:

Boddie v. Connecticut,
401 U.S. 371, (1971) 16, 23

Fuentes v. Shevin,
407 U.S. 67, 80 (1972) 17
Lassiter v. Dep't of Social Services,
452 U.S. 18 (1981)..... 17

Little v. Streater,
452 U.S. 1 (1981) 23

M.L.B. v. S.L.J.,
519 U.S. 102, 121 (1996) 16, 23

Meyer v. Nebraska,
262 U.S. 390 (1923) 16, 17, 19

Pierce v. Society of Sisters,
268 U.S. 510 (1925) 16, 17, 19
Prince v. Massachusetts,
321 U.S. 158, 88 L. Ed. 645, 64
S. Ct. 438 (1944) 19

Santosky v. Kramer,
455 U.S. 745, 753-754 (1982) 19, 20, 21

Shelley v. Kraemer,
334 U.S. 1, 16 (1948) 17

Stanley v Illinois,
405 U.S. 645 (1972) 16, 17

Page(s)

Titelman v. Stedman,
277 Ga. 460, 461-462 (591 SE2d 774) (2003) 12

Troxel v Granville,
530 U.S. 57, 65-66 (2000) 16, 17, 19

* * * * * * *

Constitutional and Statutory Provisions:

U.S. Const. Amend I 2, 21, 24, 26

U.S. Const. Amend V 2, 21, 24, 26

U.S. Const. Amend XIV 2, 5, 17, 21, 23, 24, 26

28 U.S.C. § 1257 2

Miss. Code Ann. § 43-21-353(7) 26

O.C.G.A. § 15-11-28 12

O.C.G.A. § 15-11-94 6

O.C.G.A. § 19-7-1 (2007) 3

* * * * * * *

Other Authorities:

American Psychological Association (1996),
Report of the American Psychological Association
presidential task force on violence and the family,
Washington, DC 25

Page(s)

Dalton, C. (1999), When paradigms collide: Protecting battered parents and their children in the family court s m, Family & Conciliation Courts Review, 37(3), 3-296 25

Faller, K. C., & DeVoe, E. (1995), Allegations of sexual abuse in divorce, Journal of Child Sexual Abuse, 4(4), 1-25 25

Keenan, L. (1985) Domestic violence and custody litigation: The need for statutory reform, Hofstra Law Review, 13, 407-441 25

Myers, John E. B. (1997), A Mother's Nightmare – Incest: A Practical Legal Guide for Parents and Professionals, Thousand Oaks, CA, Sage 25

National Council of Juvenile and Family Court Judges and the State Court Institute, *Navigating Custody and Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide*, (2004, revised 2006) developed under grant number SJI-03-N-103 from the State Justice Institute 8

Neustein, A., & Goetting, A. (1999), Judicial Responses to Protective Parents, Journal of Child Sexual Abuse, 4, 103-122 25

Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004), Child custody determinations in cases involving intimate partner violence: a human rights analysis, Am J Public Health, 94 (6), 951-957 25

Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004), *Protective mothers in child custody disputes: A study of judicial abuse* 24, 25

PETITION FOR A WRIT OF CERTIORIARI

PRAYER FOR RELIEF FROM OPINIONS BELOW

Petitioner, Wendy Titelman, prays that this Court grant a Writ of Certiorari to review the decision of the Georgia Supreme Court which, by its refusal to review this case, affirmed the trial court's holding that, before the court would consider allowing Petitioner visitation with her children, she would have to post a $500,000 bond and meet other monetary requirements. Additionally, Mrs. Titelman asks that this Court review the decision of the trial court (and the state Supreme Court's refusal to review the decision) which effectively terminated Petitioner's parental rights without notice, opportunity to be heard, and without a finding of clear and convincing evidence of unfitness or harm to the children.

OPINIONS BELOW

The trial court's final order was entered on January 30, 2006 (App., 12a-17a). The denial of review by the Supreme Court was entered on February 5, 2007 (App., 1a). A Motion for Reconsideration was filed by Petitioner February 14, 2007 (App., 2a-10a) and was denied April 10, 2007 (App., 11a). The orders of the Supreme Court of Georgia are unreported.

JURISDICTION

The opinion of the Supreme Court of Georgia was entered on February 5, 2007 (App., 1a). A Motion for Reconsideration was filed on February 14, 2007 (App., 2a-10a), and the final judgment of the Supreme Court of Georgia was entered on April 10, 2007 (App., 11a). On July 5, 2007 Justice Thomas extended the time within

which to file a petition for a writ of certiorari to and including September 7, 2007 (App., 33a-34a). This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be . . . subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law. . . .

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The relevant provision of the Termination of Parental Rights Statute, *O.C.G.A. § 15-11-94*, is reproduced at App., 39a-42a.

The relevant provision of the Parental Power Statute, *O.C.G.A. § 19-7-1 (2007)*, is reproduced at App., 43a-46a.

STATEMENT OF THE CASE

INTRODUCTION

Petitioner, Wendy Jane Titelman lost custody of her children, Alexandra and Jennifer Titelman, now ages 15 and 13 respectively, on February 18, 2000 during a hearing for which she had less than one day's notice. On September 20, 2000, Mrs. Titelman lost all visitation rights with her daughters, in an *ex parte* hearing at which the court was aware that she was physically unable to attend.

The orders resulting from these two hearings (App., 18a-22a) awarded custody to the children's father, the Respondent, Andrew Titelman, despite credible evidence of his sexual abuse of the children. Mrs. Titelman has not seen or spoken to her children since.

Therefore, the relationship between a mother and her two natural daughters has been totally severed by orders of the Superior Court of Cobb County Georgia. Under the order of September 20, 2000, (App., 18a-19a) Mrs. Titelman has not been allowed any contact or communication with her daughters for over seven years. This earlier order was incorporated into a final order on January 30, 2006, following a hearing on December 19, 2005 (App., 12a-17a). The final order required Mrs. Titelman to produce prohibitive amounts of money as "bond" before she would be permitted to petition the court for further

consideration of her rights to see her children (App., 14a-15a).

Mrs. Titelman moved to Mississippi in August of 2000 following her divorce from the Respondent. Her daughters had begun to disclose that the Respondent was sexually molesting them prior to the divorce proceedings. Soon after locating to Mississippi, and following another disclosure of abuse by the children, Mrs. Titelman, through counsel, and following a forensic interview of the children by a licensed, clinical psychologist, sought protection for her daughters from the Harrison County, Mississippi Chancery Court.

The Mississippi Court entered an order assuming emergency jurisdiction over the case and gave protection to the children. Several persons related to the Georgia case then traveled to Mississippi and obtained an order in which the court in Mississippi relinquished jurisdiction over the matter and the children were taken back to Georgia (App., 23a-24a). Mrs. Titelman was promptly arrested on a federal warrant issued from Georgia. The federal warrant was dismissed, but Mrs. Titelman was later re-arrested on Georgia state charges. She was tried and acquitted.

However, the Cobb County Superior Court which was presiding over the divorce and custody matters "punished" Mrs. Titelman by severing all contact with her daughters through an order entered *ex parte*, in September of 2000. The matter stayed pending in the court over five years, during which time Mrs. Titelman had no communication whatsoever with Alexandra and Jennifer, who remained in the sole custody of the man they had accused of sexual abuse.

Despite Mrs. Titelman's numerous attempts to have the matter heard, it only came before the Court for a full hearing, on December 19, 2005, five years later. The Court then entered an order on January 30, 2006 in which it ordered that Mrs. Titelman deposit $10,000.00 into the registry of the Court and post a $500,000.00 bond with the Court. Failure by Mrs. Titelman to comply with these and other requirements within ninety days would result in a final order denying all communication between the children and their mother, which would effectively terminate her parental rights (App., 14a-15a).

Mrs. Titelman argued at the December 19, 2005 hearing that the findings of the Court violated her rights to Due Process (App., 47a-62a). Additionally, the Petitioner argued, through counsel to the Georgia Supreme Court in a motion for reconsideration of the denial of her appeal, that the order constituted a *de facto* termination of her parental rights in violation of the Fourteenth Amendment of the U.S. Constitution (App., 2a-10a).

THE DIVORCE PROCEEDINGS

This litigation arises out of a divorce and custody case during which the minor children made allegations that their father, Andrew Titelman, was sexually abusing them. The children described to several professionals, in graphic detail, various incidents of sexual assault allegedly perpetrated on them by their father, the Respondent.

Andrew and Wendy Titelman were married in April 1991. Alexandra was born on May 26, 1992, and Jennifer was born on March 30, 1994. Mrs. Titelman was a stay at home mother and the primary caretaker of the children from birth, and the children had a very close and loving bond with Mrs. Titelman. The marriage was tumultuous and marked by domestic violence.

The Respondent filed for divorce in July 1998. During the course of the litigation, in March of 1999, and upon the request of the Respondent, a guardian *ad litem*, attorney Diane Woods [hereinafter "the GAL".], was appointed to act on behalf of the children. Allegations of sexual abuse of Alexandra and Jennifer, by their father, the Respondent, arose during the litigation. As a result of the abuse allegations, the GAL., recommended that her good friend, psychologist Elizabeth King, become involved in the case as a court appointed evaluator.

The two professionals, King and Woods, decided not to perform forensic interviews of the children to determine whether the Respondent was sexually molesting them. However, the children continued to make credible allegations and to report abuse to reputable mental health professionals.

Mrs. Titelman and Respondent lived together in their marital home until May 1999 when the house was sold and they moved to separate homes, thereby necessitating a temporary custody arrangement. At this time, Woods submitted her report to the Court recommending that Respondent have full custody of the children and that Wendy Titelman have limited visitation because of the GAL's fear that Mrs. Titelman would "alienate" the children from their father.

This recommendation was made despite reports by professionals with expertise in child sexual abuse expressing concern that the children were being sexually abused or being set up for abuse. An order was entered reflecting a temporary shared custody agreement under which the parties would rotate visitation weekly.

Soon thereafter, Alexandra disclosed abuse by the Respondent to Lynn Brentnall, PhD, a professional who was conducting cognitive testing of the girls. Dr. Brentnall made a report to the Department of Family and Children Services (App., 77a), and an investigation was initiated. A social worker and a detective with the Kennesaw Police Department conducted a videotaped interview of Alexandra on June 23, 1999. For a time, both the Petitioner and Respondent's visitation with the children was supervised.

In August, 1999, unsupervised visitation by both parents was resumed by court order. Soon thereafter, in September of 1999, Dr. Diane Pearce, a child abuse specialist who was seeing the children at the request of Dr. Brentnall, became convinced that serious abuse was occurring. Consequently, she reported to the Department of Family and Children Services. When there was no response, she repeatedly called and then wrote a letter of concern to the director requesting immediate action. (App., 78a-79a, excerpt from a letter to Adrienne McFall, Esq. regarding this report). Finally, an investigation was opened.

On October 21, 1999, almost three months after Dr. King was appointed to the case, and after two psychologists and several family friends had reported their belief that the children were being abused, she began interviews with the children. GAL Woods wrote a letter ordering that Petitioner may not take the children to anyone other than Dr. King, including the police, social workers, or anyone else regarding allegations of abuse.

In February 2000, Petitioner was notified by phone that an emergency hearing was scheduled for the following day, February 18, 2000. No pleading notifying Mrs. Titelman of the nature of the hearing was filed. One

hour prior to the hearing, Mrs. Titelman was given a 26 page "Custodial Evaluation Report" and a videotape produced by Respondent, Andrew Titelman.

At the hearing Dr. King testified that the videotape produced by Mr. Titelman, wherein the girls recant the allegations of abuse, proved that no abuse occurred and that Petitioner was mentally ill because she believed the children's previous disclosures.[1] Dr. King states in her Custodial Evaluation Report, "The issue of parental alienation must be a concern. Alex meets 6 of the 8 criteria and Jenny meets 7 of the 8 for Gardner's parental alienation syndrome."[2] King also found that Mrs. Titelman was suffering from a disorder she characterized as "Snow White Syndrome." Further, King opined that Mrs. Titelman was "implanting or reinforcing false memories" that created problems "with regard to parental alienation." As a result, King recommended that Respondent have full

---

[1] This video and the videotape made by the Department of Family and Children Services were never seen by the court. Kathleen Coulborn Faller, PhD, with the University of Michigan, School of Social Work later made a thorough and competent review of these tapes. In her opinion reported December 11, 2001, she concluded that "it is more likely than not that A.T. was sexually abused in a manner similar to what she described" during her forensic interview, and that the Andy Titelman produced video "appears to be a browbeating session," "the father speaks in a loud and threatening voice," and "he essentially insists his daughters say that they lied when they said he touched them in a sexual way."

[2] "Richard Gardner's theory positing the existence of 'parental alienation syndrome' or 'PAS' has been discredited by the scientific community. Testimony that a party to a custody case suffers from the syndrome should therefore be ruled inadmissible both under the standards established in *Daubert* and the stricter *Frye* standard." National Council of Juvenile and Family Court Judges and the State Court Institute, Navigating Custody and Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide, 19 (2004, rev. 2006) developed under grant number SJI-03-N-103 from the State Justice Institute.

custody of the children and that Mrs. Titelman's visitation be supervised. It was at this hearing, for which no notice was provided, that Mrs. Titelman lost custody of her daughters. The Court ordered that she have supervised visitation. Mrs. Titelman never regained custody of her children.

From March 2000 through June 2000 Mrs. Titelman paid approximately $2,000.00 per month to see her daughters 12 hours a week under supervision by A-Plus Agency per Ms. Woods and Dr. King's recommendations. Alexandra and Jennifer sometimes arrived at the visits upset and told the supervisors that their father was hurting them and was sexually abusing them.

The divorce trial was held June 28-30, 2000 and an order was entered on August 4, 2000. Andrew Titelman was awarded sole custody of the two young girls, despite abundant evidence that Mr. Titelman was sexually molesting his daughters. Mrs. Titelman was given visitation with her daughters every other weekend.

Shortly after the August 4, 2000 custody order, Mrs. Titelman moved to the Mississippi Gulf coast. The children visited with her over the Labor Day weekend. During that weekend, the girls disclosed that the Respondent came to their beds at night and rubbed their genital areas. As a result of these disclosures, Dr. Donald Matherne, a Mississippi psychologist who specializes in child sexual abuse, conducted a forensic interview with the children. Consequently, the Harrison County, Mississippi Chancery Court placed Jennifer and Alexandra into protective custody upon a review of Dr. Matherne's report (App., 80a-86a).

On September 15, 2000 the Mississippi Court held a hearing. Andrew Titelman, the GAL, and psychologist

Elizabeth King attended the hearing and made representations to the Mississippi Court that, if it returned the children to Georgia, the sexual abuse allegations would be fully investigated in Cobb County Georgia and the children would be protected. The Mississippi Court released the children to the custody of the GAL.

However, immediately after the Mississippi Court hearing, Mrs. Titelman was arrested on an Unlawful Flight to Avoid Prosecution warrant and jailed in Mississippi. The warrant was issued despite no pending prosecution by Georgia or any other authorities. Mrs. Titelman was later prosecuted for "Interstate Interference with Custody" under *O.C.G.A. §16-5-45(c)(2)* in the Cobb County, Georgia Superior Court (Case No. 00-9-4681-40). After a week long trial, the jury promptly acquitted Mrs. Titelman April 30, 2001.

On September 20, 2000 the Georgia Superior Court held an *ex parte* hearing on Respondent's pleadings alleging that Mrs. Titelman kidnapped the children. Mrs. Titelman was not notified of the hearing or served with pleadings, but learned of it one day before it occurred. She was released from jail the night before, September 19th, in Mississippi and could not physically attend the proceedings. She requested a continuance by faxed letter, citing lack of notice. The request was denied. (App., 63a – 67a).

Pursuant to the *ex parte* hearing, the Court issued a temporary order eliminating all personal or telephone contact between Mrs. Titelman and her daughters. The order also prevented Mrs. Titelman and her family from coming within 3,000 yards of the girls. The order (App., 18a-19a) remains in place today. Mrs. Titelman did not receive an evidentiary hearing for over five years.

Two weeks later, on or about October 4, 2000, a hearing was held before Superior Court Judge James Bodiford on Respondent's contempt application, which was based on the events in Mississippi. During the hearing, counsel for Mrs. Titelman challenged the September 20, 2000 order. The Court concluded that it would hold a hearing on the continued efficacy of the September 20, 2000 order at a later date. In the interim, the Court accepted an agreement among the parties that Mrs. Titelman would have no contact with her children for "at least two weeks," characterized as a "gentleman's agreement," (App., 68a-72a, excerpted transcript October 4 hearing, pg. 61) thereby effectively keeping the terms of the September 20th order in effect in the interim.

After that two-week period, Mrs. Titelman repeatedly sought a hearing to rectify the deprivation of her parental rights, including requests made through counsel for dismissal of the September 20, 2000 order, all of which the court rejected. Hearings were continued for various reasons outside the control of the Petitioner.[3] Almost two years later there was still no hearing scheduled. On July 17, 2003, more than two and a half years after Mrs. Titelman last had access to her children, she filed a Motion to Vacate and Dissolve Restraining Order Dated September 20, 2000. The Court took no action on Mrs. Titelman's motion. Mrs. Titelman is not aware of any order directly addressing the merits of her Motion to Vacate and Dissolve Restraining Order dated September 20, 2000.

---

[3] Two hearings, November 2000 and January 2001, had been scheduled and then were continued as a result of counsel's husband's illness and death. Also, Mrs. Titelman became a refuge due to Hurricane Katrina.

Between September 2000 to December 2005, in addition to seeking a hearing on the merits of the restraining order preventing her contact with her children, Mrs. Titelman made repeated attempts to have the abuse allegations heard in the Cobb County Juvenile Court. Under Georgia law, the juvenile court has exclusive, original jurisdiction over matters of abuse of minor children. *O.C.G.A. § 15-11-28(1)(C)(2007).* Mrs. Titelman was never able to get a hearing on the merits of the allegations in juvenile court.

Initially, the Cobb County Juvenile Court refused to accept for filing a petition brought by numerous citizens alleging the children were victims of abuse. The refusal was appealed and upon remand the court allowed the filing of the petition, but promptly dismissed it as a "disguised custody" matter. *Titelman v. Stedman*, 277 Ga. 460, 461-462 (591 SE2d 774) (2003). (App. 25a-32a)

Despite all her efforts, Mrs. Titelman never succeeded in obtaining a review of her case on the merits.

THE CRIMINAL TRIAL

Mrs. Titelman was tried in criminal court on the charges for "Interstate Interference with Custody" before the Honorable Robert E. Flournoy, III and a Cobb County Georgia jury on April 23-27, 2001. She was acquitted after a very short jury deliberation. The jurors took an unusual and extraordinary step of writing a letter to District Attorney Patrick Head and Judge James Bodiford, the judge presiding over the custody case, calling the prosecution an inexcusable "cover-up" of the State of Georgia's malfeasance and failure to protect the children (App., 73a-76a).

The letter was presented by Jury Foreperson Bryan Wilson and states, in part:

> We were perplexed as to why our state would pursue such a case so diligently when there were obvious errors in the indictment and credible reports indicating sexual and emotional abuse to two small children and the prosecution of the mother who sought to protect them from harm's way. Id

THE FINAL VISITATION ORDER

The Superior Court did not conduct a final hearing on Respondent's contempt and visitation pleadings until December 19, 2005, and did not enter an order thereon until January 30, 2006. The January 30, 2006 order states, in pertinent part, that "this Court's Order on Plaintiff's October 11, 2000 Application for Contempt and Petition for Modification of Visitation shall govern custody and visitation of [Appellant's children]." The order does not find Petitioner "unfit" nor detail any clear and convincing evidence to support the complete prohibition of contact between Mrs. Titelman and her children (App., 12a-17a).

From September 20, 2000 through January 30, 2006, the court denied Mrs. Titelman due process of law and, based entirely on an *ex parte* hearing, stripped Mrs. Titelman of a fundamental right – access to her natural children. The January 30, 2006 order placed an impossible monetary burden on Mrs. Titelman and severed her relationship with her children (App., 12a-17a).

On January 30, 2006, the September 20, 2000 *ex parte* order was made permanent when Mrs. Titelman was found to be in "willful contempt" of court for the very same action which she was criminally prosecuted and

found "not guilty" by a jury of her peers in April 2001. As punishment, the court ordered that Mrs. Titelman and all members of her family "are enjoined and prohibited from communicating in any manner with the Children, being within 3,000 yards of the Children, or directing any third party to communicate or physically approach the Children."

Mrs. Titelman was further punished with a fine of $24,384.15, and she was ordered to pay into the registry of the Court the sum of TEN THOUSAND DOLLARS ($10,000.00) and obtain a cash bond in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) within 90 days. Only then would the Court "entertain" a hearing on the appointment of a guardian *ad litem* (GAL), and,

> [S]hould the Court appoint a GAL, the Court will enter an Order specifying the role and duties of the GAL; Defendant's $10,000.00 deposit into the registry of the Court and the $500,000.00 bond shall, (a) serve to satisfy attorney's fees and costs of litigation associated with any legal proceedings brought against the GAL by any person or entity in any court or tribunal of any jurisdiction, including disciplinary proceedings before any State Bar, associated with his or her duties as GAL of the Children, and (b) serve to satisfy any orders or judgments rendered against Defendant subsequent to entry of this Order, including but not limited to monetary judgments in favor of Plaintiff.

Furthermore, the Court ordered that should Mrs. Titelman fail to deposit $10,000.00 into the registry of the Court and/or fail to obtain the $500,000.00 bond on or before the expiration of ninety (90) days from December 19, 2005 then the custody and visitation provisions given shall become the final order of the Court. This order

deprived Mrs. Titelman of her procedural due process and equal protection rights and constitutes a *de facto* termination of her parental rights by denying her the fundamental right to parent or even have a relationship with her children. (App., 12a-17a).

The petitioner timely appealed all orders related to the December 19, 2005 hearing to the Georgia State Supreme Court.

THE APPEAL

The appeals were dismissed by the Supreme Court of Georgia on February 5, 2007 (App., 8a). A Motion for Reconsideration was filed by Petitioner February 14, 2007 (App., 2a-10a), and was denied April 10, 2007 (App., 11a).

Therefore, this Court is the only Court which may grant Mrs. Titelman relief from the order by the Cobb County Superior Court. On July 5, 2007, Justice Thomas extended the time within which to file a petition for a writ of certiorari in the United States Supreme Court, to and including September 7, 2007 (App., 33a-34a). Mrs. Titelman timely petitions this Court for a Writ of Certiorari.

REASONS CERTIORARI SHOULD BE GRANTED

The due process violations described in this case and amplified in the briefs of Amici Curiae, are painfully widespread among family courts across the country. Not only do family courts routinely deprive litigants of fair process in adjudicating their parental rights, state courts of appeal all too often, as did this court, fail to directly address and rectify these violations. As a result, it is necessary for this Court to review a case such as this to identify and vindicate these fundamental violations of basic rights of due process and rights to parent. Such

vindication would affirm that this Court's due process jurisprudence regarding both procedural fairness and the right to parent applies to private custody litigation, an arena which this Court has very rarely addressed, and which is sorely in need of such attention.

A grant of certiorari is also critically needed to establish that it is possible for a custody/visitation decision to be so extreme as to be the functional equivalent of a termination of parental rights. Although "loss of custody" is normally not comparable to parental termination, because it does not "sever the parent-child bond," *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996), in a case like this, where a mother is cut off from all contact with the children, the adjudication does "sever the parent-child bond" and is no different from parental termination in its impact and its import.

The decisions of this Court, which these family court practices implicate, include (i) *M.L.B. v. S.L.J.*, 519 U.S. 102, (1996) (denial of fee waiver for transcripts for appeal of parental termination violates due process) and *Boddie v. Connecticut*, 401 U.S. 371, (1971) (requiring state courts to provide fee waivers for indigent litigants seeking a divorce); this principle should, apply equally to indigent custody litigants seeking access to their own children; (ii) *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (fundamental right to raise children); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (same); *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (same); and (iii) *Stanley v Illnois*, 405 U.S. 645 (1972) and its progeny, establishing rights to notice and a hearing before an unmarried father can be deprived of parental rights; this principle surely applies to a mother being deprived of all access to her children in custody litigation.

I. The Denial of All Access to Her Children Without Adequate Notice or any Hearing for Five Years Violated Mrs. Titelman's Right to Due Process.

The Court's order of January 30, 2006 constitutes state action under the law. "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment." *Shelley v. Kraemer*, 334 U.S. 1, 16 (1948). *Moreover, "[f]or m*ore than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified, *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

The final decision in January 2006, effectively terminating Petitioner's parental rights, expressly adopted the preceding "temporary" decision issued five years earlier, after the Sept. 20, 2000 *ex parte* hearing, which was held without Petitioner and with only one day's notice to her. While the *ex parte* hearing (and the subsequent "agreement" to temporarily abstain from visits pending a full hearing) ostensibly did not permanently adjudicate Petitioner's parental rights, the court's refusal to then hold a hearing on the matter for five years, essentially did the same thing. This Court has repeatedly affirmed that a parent's right to a relationship with their children is among the most fundamental liberties protected by the Constitution. *Troxel v Granville*, 530 U.S. 57, 65-66 (2000); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). To deny a parent all access to her children for five years without any hearing is a profound deprivation of procedural due process. *Stanley v. Illinois*, 405 U.S. 645 (1972); *Lassiter v. Dep't of Social Services*, 452 U.S. 18 (1981).

This Court has not previously held that an indefinite deprivation of all access to one's children constitutes an infringement of a parent's fundamental right to parent her children. However, in *Fuentes v. Shevin, supra*, the Court held that even a deprivation of property could not be inflicted *ex parte* without prior notice and opportunity for hearing. The facts of this case, which, as Amici Curiae note, are far from unique, demonstrate that even a "temporary" deprivation is, in some circumstances, sufficiently severe as to be the equivalent of a permanent deprivation. This Court should grant certiorari to set a minimal standard of fairness in custody/visitation adjudications and to ensure that parents cannot be deprived of all access to their children for years at a time without adequate notice and a fair hearing.

II. The Court's 2006 Order Depriving Petitioner of any Access to her Children without a Finding of Unfitness Constituted a *De Facto* Termination of Parental Rights without Clear and Convincing Evidence of Unfitness.

The trial court's order of January 30, 2006 unconstitutionally prohibits Mrs. Titelman from having any contact with her daughters. This order constituted a *de facto* termination of Mrs. Titelman's parental rights without due process of law. In particular, between September, 2000 and January, 2006, the lower court prevented Mrs. Titelman from visiting with her minor children under the aegis of a 'temporary' order issued as a result of an *ex parte* hearing held on September 20, 2000. During these five and a half years, the court failed to conduct any final hearing, failed to apply the 'clear and convincing evidence' legal standard, and failed to make any findings of fact or conclusions of law, as required by federal and Georgia state law when parental rights are

terminated. As a result, the court effectively and unlawfully terminated Mrs. Titelman's parental rights in her natural children.

The constitutional right to parent children is well settled under current case law. In its recent decision in *Troxel v Granville*, 530 U.S. 57, 65-66 (2000), this Court stated:

> The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." . . . We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children.

Accordingly, this Court has also held that no State may deprive a parent of parental rights without a finding by clear and convincing evidence that the parent is unfit. *Santosky v. Kramer*, 455 U.S. 745, 769-770 (1982).

The court below made no finding that Mrs. Titelman was unfit by clear and convincing evidence as

required by *Santosky*. In the January 30, 2006 order, the court stated only that it is:

> distrustful of Defendant; the Court is in fear for the safety and wellbeing of the Children with regard to the conduct of Defendant; the court is in fear that Defendant would, in violation of any Order issued by the Court, again remove the Children from the jurisdiction of the Court.

Indeed, the court never even adjudicated the allegations of sexual abuse; being content to merely state that it would "never know" (App., 54a).

However, Mrs. Titelman did not "remove" the children from the jurisdiction of the Court by her previous actions. She sought protection for her daughters when they visited her, and she had a well-founded belief that the Respondent was harming them. Even if Mrs. Titelman made judgment errors, she is entitled fundamental fairness in the proceedings and she does not forfeit her constitutional right to parent her children. As this Court has stated:

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy

> weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Santosky v. Kramer, 455 U.S. 745, 753-754 (1982). The trial court failed to make any findings to comport with the constitutionally required standard adopted in *Santosky*.

Finally, while a denial of custody and any visitation may be technically distinguished from the legal termination of parental rights at issue in *Santosky*, such a distinction would place semantics over actual meaning. In this "visitation" adjudication, the court has completely terminated Mrs. Titelman's relationship with her children and made it impossible for her to regain contact. Regardless of who initiated the legal proceedings, the State has emphatically "closed the gate" against any contact between mother and daughters. This deprivation is permanent, so long as the children are minors, because the court's condition for re-opening the case cannot be met because of the indigence of the petitioner.

This Court should grant certiorari to establish that even in private custody/visitation litigation, a functional termination of parental rights implicates the protections of the Fourteenth Amendment and requires a finding of unfitness.

III. The Imposition of a Prohibitive Monetary Requirement on an Indigent as a Predicate for Seeking a Hearing on her Parental Rights Violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The decision of the trial court in this case that Mrs. Titelman must, in spite of her indigence, deposit $10,000 and obtain a cash bond of $500,000 before any further proceedings regarding her right to see her children would

be held, (in part as punishment for her actions in Mississippi), violates the First, Fifth, and Fourteenth Amendment of the Constitution.

Specifically, the Georgia Superior Court violated Mrs. Titelman's right to due process when it ordered the Petitioner, who is indigent, to post a five hundred thousand dollar bond and pay ten thousand dollars into the court registry as a precondition for the possibility of contact with her daughters. If Mrs. Titelman met the conditions set out by the Court, the court would then "set a hearing on the sufficiency of the bond" and initiate other legal proceedings that might possibly lead to eventual contact between Mrs. Titelman and Jennifer and Alexandra. Of course, Mrs. Titelman was unable to meet such excessive monetary requirements, as the court was well aware.

Mrs. Titelman's affidavit and financial records were submitted to the Court and a hearing was held on June 2, 2006, on the issue of indigency. However, the Court refused to rule and stated that it had no authority to make a finding. (App., 35a-48a) The following month, during a hearing on July 21, 2006, the trial court acknowledged Mrs. Titelman's indigence and stated, "[Mrs. Titelman] is a middle-aged woman and she has basically got nothing at all, . . . has no financial means, . . You don't have a pot to you know what in because you have told me you have got nothing... You don't have anything at all. You don't have any money. . .." The Court thus imposed prohibitive financial requisites on Mrs. Titelman's access to Alexandra and Jennifer even while acknowledging her inability to meet the requirements it imposed.

The trial Court, in justifying the amount of the bond it set, called Mrs. Titelman's attorneys and many supporters "kamikazes" and stated that such a high bond

was necessary in order to "keep [them] up in the sky." (App., 47a-62a)

This Court has held unconstitutional a monetary requirement for transcripts that effectively blocked a litigant's access to appellate review of a termination of parental rights. In *M.L.B. v. S.L.J.*, 519 U.S. 102, (1996), the Court found that, "...Mississippi may not deny *M. L. B.*, because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent." This Court has also specifically outlawed filing fees for divorce which make access to divorce less available to indigents. *Boddie v. Connecticut*, 401 U.S. 371 (1971) (holding that state monopolization of the mechanism for divorce makes access to the court a due process requirement). See also *Little v. Streater*, 452 U.S. 1 (1981) (State must pay for blood grouping tests where indigent contests paternity).

The trial court's requirements in this case, that Mrs. Titelman must produce tens of thousands of dollars before she could seek further judicial consideration of her rights to her children, have the predictable effect of keeping her out of court. While not specifically a "filing fee," such monetary requirements were actually far worse, because of their excessiveness and arbitrariness. To financially bar access to the court in connection with such a fundamental right as a parent's access to their children surely violates the procedural due process and equal protection clauses of the Fourteenth Amendment. *Boddie*, supra.

While this factual scenario may appear unusual or aberrational, prohibitive monetary requirements which deny parent's access to justice are not uncommon in family courts around the country. A decision by this Court establishing some minimal standards of fairness for such

bonds and fees would go a long way to improving justice for parents.

IV. Punishment By Termination Of All Contact With Her Children Based On Acts Of Good Faith Allegations And Reasonable Belief Supported By Facts That Her Children Are Victims Of Child Abuse Violated Her Constitutionally Protected Rights Under The First, Fifth and Fourteenth Amendments.

Parents must be free to pursue action they believe protects their children without fear of punitive consequences such as the loss of contact with their children as happened in this case. There is a mounting and alarming body of research and literature that reveal a serious level of skepticism in family courts across the country when it comes to claims of child sexual abuse and domestic violence. Studies reveal that when a parent makes good faith allegations of abuse, there is a good chance of losing custody to the alleged abuser. Consequently, parents are being silenced by fear and not reporting their children's abuse.

A study by Stahly, Krajewski, Loya, Uppal, German, Farris, Hilson, and Valentine published in 2004, *Protective mothers in child custody disputes: A study of judicial abuse*, shows that 83% of protective parents lost custody after reporting abuse; most protective parents lost custody in emergency *ex parte* proceedings; 65% reported that they were threatened with sanctions if they "talked publicly" about the case; 87% of the protective parents believe that their children are still being abused; 63% have stopped reporting the abuse for fear that contact with their children will be terminated; 11% of the children were reported to have attempted suicide. Stahly, G. B.,

Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004), *Protective mothers in child custody disputes: A study of judicial abuse.* See also, Neustein, A., & Goetting, A. (1999), Judicial Responses to Protective Parents, *Journal of Child Sexual Abuse*, 4, 103-122; American Psychological Association (1996), *Report of the American Psychological Association presidential task force on violence and the family*, Washington, DC; Dalton, C. (1999), When paradigms collide: Protecting battered parents and their children in the family court system, *Family & Conciliation Courts Review, 37*(3), 273-296; Keenan, L. (1985), Domestic violence and custody litigation: The need for statutory reform, *Hofstra Law Review, 13*, 407-441; Myers, John E. B. (1997), *A Mother's Nightmare - Incest: A Practical Legal Guide for Parents and Professionals*, Thousand Oaks, CA, Sage; Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004), Child custody determinations in cases involving intimate partner violence: a human rights analysis, *Am J Public Health, 94* (6), 951-957.

Just as Mrs. Titelman experienced devastating serious consequences as a result of reporting her children's disclosures of sexual abuse and her attempt to protect them, many other parents are suffering the same outcome. In 1995 Faller and DeVoe found over 18% of parents who raised issues of sexual abuse experienced negative sanctions including being jailed, losing custody to the alleged offender, limitation or loss of visitation, admonitions not to report alleged abuse again to the court, protective services or the police, and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future.

Faller and DeVoe also found that these sanctioned cases scored higher on a composite scale of likelihood of

sexual abuse, and were more likely to have medical evidence than cases without sanctions. Faller, K. C., & DeVoe, E. (1995), Allegations of sexual abuse in divorce, *Journal of Child Sexual Abuse*, 4(4), 1-25. Therefore, the current trend in custody cases involving allegations of abuse has a chilling effect on the reporting of the abuse.

Furthermore, all 50 of the Unites States of America have statutes requiring mandatory reporting of child abuse and neglect. Thirty states do not list a parent or family member as a mandated reporter. However, in all 50 states, the law does provide for the removal of the children from an unsafe home and termination of parental rights if the risk of harm persists. Additionally, parents may be charged criminally and civilly for failure to protect their children from abuse.

In Mississippi, where Mrs. Titelman had moved and when she lost all contact with her daughters, her penalty for failure to report her reasonable belief that her children were sexually abused (as a mandated reporter) would have been a fine up to $5,000 and/or jail not to exceed one year. *Miss. Code Ann. § 43-21-353(7).* Dr. Donald Matherne believed the children to be sexually and emotionally abused and he reported this to protective services as required.

However, the punishment Mrs. Titelman has suffered for lawfully seeking protection of her children is far greater than any punitive action anywhere in the country for mandated reporters who knowingly allow a child to remain in an abusive situation and say nothing. Moreover, parents have a vested interest in the welfare of their children, yet are finding that the family court wields a double-edged sword that may sever their relationship with their children no matter what they do. Research shows in

every state, parents who make allegations of intrafamilial abuse and report the abuse and/or seek protection of their children stand an increased chance of losing custody to the abuser. Stahly, Id.

A state court's action that silences a protective parent makes it impossible for that parent to protect her children and therefore violates the First, Fifth and Fourteenth Amendments. This Court is the only court that can provide redress for these egregious violations of constitutional rights and provide a remedy that allows parents to act upon a reasonable belief that their children are victims of abuse, when that abuse occurs in the home.

In this case, Mrs. Titelman suffered the ultimate consequence of the loss of her children for reporting their abuse to the Mississippi authorities. Anyone remotely aware of this outcome, and others like it, would heed its lesson about reporting child abuse in a domestic relations case. This Court's ruling on this monumental issue will end the no-win situation in which protective parents find themselves when making decisions such as those faced by Mrs. Titelman. Given the current situation in the family court system, only this Court's ruling can remove the loss of contact, custody, or visitation with children as a potential consequence for reasonable action taken by a party in response to a report of child abuse.

CONCLUSION

Petitioner respectfully prays that this Court grant the Petitioner's Writ of Certiorari and review the findings of the Court below.

Respectfully submitted,

/s/Sherry A. Quirk
SHERRY A. QUIRK
Counsel of Record
Schiff Hardin LLP
1666 K Street NW, Suite 300
Washington, DC 20006
(202) 778-6400

/s/Cynthia A. Cheatham
CYNTHIA A. CHEATHAM
Parsons & Nichols
101 W. Main Street
Manchester, TN 37355
(931) 728-1316

Counsel for Petitioner

SEPTEMBER 2007

APPENDICES TABLE OF CONTENTS

Page

A. Opinion of
The Supreme Court of Georgia
filed on February 5, 2007 ..... 1a

B. Motion for Reconsideration
filed by Petitioner February 14, 2007 ..... 2a

C. Order of
The Supreme Court of Georgia
filed on April 10, 2007 ..... 11a

D. Order of
Superior Court of Cobb County
filed on January 30, 2006 ..... 12a

E. Order
Cobb County Georgia Superior Court
filed on September 20, 2000 ..... 18a

F. Emergency Order
Cobb County Georgia Superior Court
filed on March 2, 2000 ..... 20a

G. Agreed Order
Mississippi Chancery Court
September 5, 2000 ..... 23a

H. Opinion
Supreme Court of Georgia, Titelman v. Stedman,
277 Ga. 460, 461-462 (591 SE2d 774) (2003) 25a

Page

I. Extension of Time Granted By
Justice Thomas
July 5, 2007 ..... 33a

J. Order
Cobb County Georgia Superior Court
Filed on June 14, 2006 ..... 35a

K. Relevant provision of
The Termination of Parental Rights Statute,
O.C.G.A. § 15-11-94 ..... 39a

L. Relevant provision of
The Parental Power Statute,
O.C.G.A. § 19-7-1 (2007) 43a

M. Excerpted transcript from Final Hearing
Superior Court of Cobb County
December 19, 2005 ..... 47a

N. Excerpted transcript from *Ex Parte* Hearing
Superior Court of Cobb County
September 20, 2000 ..... 63a

O. Excerpted transcript from Hearing
Superior Court of Cobb County
October 4, 2000 ..... 68a

P. Juror's letter
May 2001 ..... 73a

Page

Q. Excerpt from report of
Lynn Brentnall, PhD
June 16, 1999 ..... 78a

R. Excerpt from letter of
Diane Pearce, PhD
August 31, 2000 ..... 79a

S. Excerpt from reports of
J. Donald Matherne, PhD
September 2, 2000 ..... 81a

APPENDIX A

SUPREME COURT OF GEORGIA
Case No. 507A0642, 507A0643

Atlanta February 5, 2007

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

WENDY J. TITELMAN V.
ANDREW CHARLES TITELMAN

From the Superior Court of Cobb County.

These cases arise originally out of the parties' 2000 divorce and appellee's subsequent Application for Contempt and Petition for Modification of Visitation, which the trial court granted on January 30, 2006. Appellant also filed numerous pleadings in the cases, seeking contempt, change of custody, transfer to juvenile court, to vacate a 2000 order and to dismiss appellee's petition, all of which the trial court also denied in separate orders dated January 30, 2006. Appellant filed 14 notices of appeal in each case (calling them "Notice of Discretionary Appeal"), but she never filed any applications for appeal in this Court. As applications for appeal are required to appeal orders in domestic relations cases these direct appeals hereby are dismissed. OCGA $ 5-6-35 (a) (2). All the Justices concur, except Hines, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynn M. Stickome, Chief Deputy Clerk

APPENDIX B

IN THE SUPREME COURT OF GEORGIA

ANDREW CHARLES TITELMAN Appellee v.	CASE NOS. S07A0642 & S07A0643
WENDY JANE TITELMAN Appellant COUNTY	ON APPEAL FROM THE COBB
	SUPERIOR COURT TRIAL COURT CIVIL ACTION NOS. 00-18035-33 & 98-15890-33

MOTION AND POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION AND REINSTATEMENT OF APPEALS

Comes now Wendy J. Titelman, Appellant in the above-mentioned actions, by and through undersigned counsel, and respectfully files this Motion for Reconsideration and Reinstatement of Appeals pursuant to Supreme Court Rule 27, based on the on the grounds that the issues presented in the court orders under review constitute a *de facto* termination of Mrs. Titelman's parental rights without due process of law.

1. INTRODUCTION

The court orders under review constitute a *de facto* termination of Mrs. Titelman's parental rights without due process of law. In particular, between September, 2000 and January, 2006, the lower court prevented Mrs. Titelman from visiting with her minor children under the aegis of a "temporary" order issued as a result of an *ex parte* hearing

held on September 20, 2000. During these five and a half years, the court failed to conduct any final hearing, failed to apply the "clear and convincing evidence" legal standard, and failed to make any findings of fact or conclusions of law, as required by federal and Georgia state law. As a result, the court effectively and unlawfully terminated Mrs. Titelman's parental rights in her natural children.

2. STATEMENT OF FACTS

Pursuant to a Decree of Divorce ("Divorce Decree") involving the parties entered on August 10, 2000, the Appellee, Andrew Titelman, received sole legal and physical custody of the parties' two minor children. Mrs. Titelman retained visitation rights. See Appellant's Exhibit A. Less than one month after the Divorce Decree, on or about September 5, 2000, Mr. Titelman filed an Emergency Application for Contempt in the lower court. This Emergency Application requested that the Court deny Mrs. Titelman any further visitation with her children. On September 20, 2000, the court held an *ex parte* hearing and issued an *ex parte* Order ("September 20, 2000 Order") preventing Mrs. Titelman and her family from coming within 3,000 yards of the Titelman children. See Appellant's Exhibit B.

On or about October 4, 2000, a hearing was held before Judge Bodiford on Mr. Titelman's Application for Contempt. During the hearing, counsel for Mrs. Titelman challenged the September 20, 2000 Order. See Appellant's Exhibit C at 54. At the conclusion of the hearing, the Court concluded that it would hold a hearing on the continued efficacy of the September 20, 2000 Order. See id. at 55-56. In the interim, the Court accepted an agreement among the parties that Mrs. Titelman would have no contact with her children for "at least two weeks," thereby effectively

keeping the terms of the September 20 Order in effect for that period of time. See id. at 62.

After that two week period, Mrs. Titelman thereafter made repeated attempts to rectify the deprivation of her parental rights without a lawful court order, all to no avail. Her counsel mailed a letter dated October 19, 2000, and proposed order to Judge Bodiford to "reinstate" Mrs. Titelman's visitation rights. See Appellant's Exhibit D. The Court denied counsel's request. Almost two years later there was still no hearing scheduled. On July 17, 2003, more than two and a half years after Mrs. Titelman last had access to her children, Mrs. Titelman filed a Motion to Vacate and Dissolve Restraining Order Dated September 20, 2000. See Appellant's Exhibit E. Thereafter, the Court took no action on Mrs. Titelman's motion.[1]

The Court did not conduct a final hearing on one of Mr. Titelman's Motion for Contempt until December 19, 2005, and did not enter a valid order thereon until January 30, 2006.[2] See Appellant's Exhibit F. In the interim, from September 20, 2000, through January 30, 2006, the court denied Mrs. Titelman due process of law and, based entirely on an *ex parte* hearing, stripped Mrs. Titelman of a fundamental right – access to her natural children.

---

[1] In fact, Mrs. Titelman is not aware of any order directly addressing the merits of her Motion to Vacate and Dissolve Restraining order Dated September 20, 2000.

[2] The January 30, 2006 Order states, in pertinent part, that "this Court's Order on Plaintiff's October 11, 2000 Application for Contempt and Petition for Modification of Visitation shall govern custody and visitation of [Appellant's children]." Notwithstanding the literal import of that language, Appellant respectfully submits that the lower court did NOT issue any order resulting from Plaintiff's aforementioned pleading until January 30, 2006.

3. ARGUMENT

On February 5, 2007, this Court terminated the above-captioned appeals on the grounds that Mrs. Titelman had failed to file any applications for appeal with this Court. See Appellant's Exhibit G. In fact, the Court erred in dismissing these appeals because Mrs. Titelman qualifies for a direct appeal. In particular, the orders at issue terminated her parental rights, which is a deprivation directly appealable to this Court. Therefore, the Court should vacate its order dated February 5, 2007, and reinstitute this matter for further proceedings on the merits. See In the Interest of J.P., 267 Ga. 492, 480 S.E.2d 8 (1997) (finding deprivation findings directly appealable).

I. The September 20 Order Terminated Appellant's Parental Rights Without Due Process of Law and In Violation of Georgia Statutory Law.

There is no question that the *ex parte* September 20 Order, the procedurally and legally deficient order underlying this appeal, deprived Mrs. Titelman of her parental rights for more than five years. In particular, the stay-away directive contained in the September 20 Order, coupled with the Divorce Decree vesting legal and physical custody in Appellee, unequivocally represents a *de facto* interference with and deprivation of Mrs. Titelman's parental rights in her natural children. In the instant case, the juridical status between Mrs. Titelman and her children remained unchanged after the September 20, 2000 order. In contrast, Mrs. Titelman's effective relationship with her natural children was not only compromised but, in fact, severed after the *ex parte* hearing and the September 20 Order.

As a result, the September 20 Order is legally deficient because it does not contain any of the analysis that Georgia law requires before a court can terminate parental rights. See Ga. Code Ann. § 15-11-94 (2007). Specifically, Georgia law requires that the court find by clear and convincing evidence that specified parental misconduct has occurred. Such parental misconduct includes: (1) parental failure for more than a year to pay child support or spousal ordered by a court of competent jurisdiction (§ 15-11-94 (b)(1)-(2)), (2) parental abandonment of the minor child(ren) § 15-11-94(b)(3), (3) parental misconduct as defined in the statute (§ 15-11-94(b)(4)), or (4) a parent has murdered the other parent (§ 15-11-94(b)(5)).

It is also clear that Georgia law favors, to the extent possible, preserving the relationship between the non-custodial parent and the minor child(ren) even in the context of a deprivation proceeding. For instance, Georgia law specifically requires the terminating court to consider whether the parental "misconduct" at issue has continued for a period of twelve months notwithstanding a court plan to reunite the parent and child(ren). See id., § 15-11-94 (b)(4)(C).

Here, no court has made the required findings of fact and conclusions of law, applying the clear and convincing evidence standard, to show that a deprivation has occurred and that termination of parental rights is warranted. No Court has found that Ms. Titelman is an unfit parent. No court has found that she failed to pay child support, engaged in material misconduct that has continued unabated for a period of twelve months, or that she has murdered her former spouse. Notwithstanding the absence of such findings, she was ordered not to see or contact her children. In the Interest of J.D.F., 277 Ga. App. 424, 626 S.E.2d 616, (2006) ("Termination of parental rights

is a remedy of last resort that cannot be sustained where there is no clear and convincing evidence that the cause of the deprivation is likely to continue.").

When a parent's rights to his child have been severed, as they have with Mrs. Titelman, the discretionary appeal procedure is not required. A right to direct appeal lies from the final order. Ga. Divorce, Alimony, & Child Custody § 22:18, 2007; *O.C.G.A. § 5-6-34.*

II. Appellant's Constitutional Rights Have Been Violated, and This Court Should Not Dismiss Appellant's Appeals on Technical Grounds.

There is no legitimate dispute here that Mrs. Titelman has a constitutional right to her parental interests in her child(ren), and that deprivation of those rights requires due process of law. Compare Troxel v. Granville, 530 US 57, 67 (2000) with Nodvin v. Nodvin, 235 Ga. 708, 708, 221 S.E.2d 404, 404 (1975); In re M.H.W., 277 Ga. App. 318, 626 S.E.2d 515 (2006); In the Interest of J.D.F., 277 Ga. App. 424, 626 S.E.2d 616, (2006). "Because no judicial determination has more drastic significance than the permanent severance of a parent-child relationship, the severance of that relationship must be exercised cautiously and scrutinized deliberately." In the Interest of K.M., 240 Ga. App. 677, 679-80, 523 S.E.2d 640 (1999).

This constitutional right is a fiercely guarded right that should be infringed upon only under the most compelling circumstances. Based on this liberty interest, for example, the Court has concluded that parents have the right to establish a home, direct the upbringing of their children, and control their children's education,_ and the state may not sever the rights of parents in their natural child in a neglect proceeding unless it proves by clear and

convincing evidence that the parents are unfit to raise their children." Clark v. Wade, 273 Ga. 587, 544 S.E.2d 99 (2001).

Nor should courts decide matters affecting the welfare of children, or the status of parental rights, on technical grounds alone. See Troxel, 530 U.S. at 67. In Santosky v. Kramer, 455 U.S. 745 (1982), the Supreme Court stated:

> When blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs [emphasis added].

Since 2000, the Georgia courts have failed to provide Ms. Titelman the procedural protection constitutionally due to her and to her children. In fact, the court's use of a contempt process to deprive a mother any contact with her children without lawful process for more than five years reflects a punitive intent which warrants further review on appeal. For these reasons, the Court should vacate its order dated February 5, 2007, and permit Ms. Titelman to proceed with the merits of her appeals.

CONCLUSION

Based on the foregoing reasons, and based on any other reasons that the Court deems just, proper, and equitable, Appellant respectfully prays that this Honorable Court reinstate the appeals sought in Case Nos. S07A0642 & S07A0643, consolidate the 14 orders at issue in this case into a single appeal, and grant an enlargement of time for Appellant to file a brief for these matters.

In the event that this Court deems that any of these orders should be subject to discretionary appeal, Appellant respectfully requests that an extension of time be granted and that she be allowed an additional 20 days to file an application for appeal pursuant to the rule.

Respectfully submitted,

/s/ Russell C. Ford
RUSSELL C. FORD
Georgia Bar ID# 268177
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Of Counsel:

Jonathan N. Rosen
Noam B. Fischman
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of February, 2007, I caused a true and correct copy of the foregoing Motion And Points and Authorities In Support of Motion for Reconsideration and Reinstatement of Appeals to be served on the counsel for Appellee, as indicated below:

Via First Class Mail, Postage Pre-Paid:
John C. Mayoue, Esq.
Pamela J. Gray, Esq.
Dennis G. Collard, Esq.
Riverwood 100 Building
Suite 2300
3350 Riverwood Parkway
Atlanta, Georgia 30339

Richard W. Schiffman, Jr., Esq.
14th Floor Lenox Towers II
3400 Peachtree Road, NE
Atlanta, GA 30326

/s/ Russell C. Ford, Esq.

APPENDIX C

SUPREME COURT OF GEORGIA

Case No. 507A0642 Atlanta, April 10, 2007

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WENDY J. TITELMAN V. ANDREW CHARLES TITELMAN

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.
All the Justices concur, except Hines, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Therese S. Barnes, Clerk

APPENDIX D

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ANDREW CHARLES TITLEMAN,

Plaintiff,

CIVIL ACTION
FILE NO. 98-1-5890-33

vs.

WENDY J. TITLEMAN,

CIVIL ACTION
FILE NO. 00-108035-33

Defendant.

ORDER

Having reviewed briefs and heard oral arguments on Plaintiff's October 11, 2000 APPLICATION FOR CONTEMPT AND PETITION FOR MODIFICATION OF VISITATION, First Amendment filed February 1, 2001, Second Amendment filed September 22, 2001 and Third Amendment filed August 19, 2005, the Court finds the following:

1.

On or about September 1, 2000, Defendant removed ALEXANDRA ROSE TITELMAN and JENNIFER ELIZABETH TITELMAN (hereinafter, the "Children") to Harrison County, Mississippi in willful contempt of the August 10, 2000 Final Judgment and Decree of this Court (hereinafter, the "Final Judgment and Decree").

2.

Plaintiff incurred expenses related to the travel of his counsel, the guardian ad litem, the custodial evaluator and the children's therapist to Harrison County, Mississippi to effect the safe return of the Children to the jurisdiction of this Court.

3.

Due to Defendant's conduct subsequent to entry of the Final Judgment and Decree, Defendant lacks credibility as a litigant and witness before this Court; the Court is distrustful of Defendant; the Court is in fear for the safety and wellbeing of the Children with regard to the conduct of Defendant; the Court is in fear that Defendant would, in violation of any Order issued by the Court, again remove the Children from the jurisdiction of the Court.

4.

Defendant failed to pay one-half of the Children's medical expenses not covered by insurance as required by the Final Judgment and Decree, in willful contempt of the power and authority of this Court.

5.

Defendant failed to pay one-half of the Children's therapy sessions with Lorita Whitaker, LCSW, as required by the Final Judgment and Decree, in willful contempt of the power and authority of this Court.

6.

Defendant failed to assume or refinance the mortgage on the real property commonly known as 2179 Shillings Chase, Kennesaw, Cobb County, Georgia, 30152 (hereinafter, "2179 Shillings Chase") as required by the Final Judgment and Decree, in willful contempt of the power and authority of this Court.

7.

Defendant failed to pay expenses related to 2179 Shillings Chase as required by the Final Judgment and Decree, in willful contempt of the power and authority of this Court.

8.

Defendant failed to pay Plaintiff one-half of the net equity in 2179 Shillings Chase as required by the Final Judgment and Decree, in willful contempt of the power and authority of this Court.

9.

Due to Defendant's refusal to refinance the mortgage on 2179 Shillings Chase, Plaintiff, to protect his standing with creditors, paid mortgage principal and interest due on such property subsequent to entry of the Final Judgment and Decree.

10.

Due to Defendant's abandonment of 2179 Shillings Chase, Plaintiff paid all expenses related to the upkeep and maintenance of such property subsequent to entry of the Final Judgment and Decree.

11.

In Order to obtain the fair market value of 2179 Shillings Chase, Plaintiff commissioned an appraisal of such property, as required by the Final Judgment and Decree.

IT IS THEREFORE HEREBY ORDERED AND ADJUDGED that Defendant is held in willful contempt of the power and authority of this Court for removing the Children from the jurisdiction of the Court on or about September 1, 2000; Plaintiff shall retain temporary sole legal and physical custody of the Children, during such temporary period, Defendant shall have no visitation with the Children and Defendant and all members of Defendant's family are enjoined and prohibited from communicating in any manner with the Children, being within 3,000 yards of the Children, or directing any third party to communicate or physically approach the Children; the custody and visitation provisions of this Order shall be effective for a period of ninety (90) days from December

19, 2005; if, on or before the expiration of such ninety (90) day period, Defendant pays into the registry of the Court the sum of TEN THOUSAND DOLLARS ($10,000.00) and obtains a cash bond in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), the Court shall thereafter set a hearing on the sufficiency of the $500,000.00 bond for the purposes described herein, and, if the bond is found to be sufficient, the Court will thereafter entertain a hearing on the appointment of a guardian ad litem (hereinafter, "GAL"); should the Court appoint a GAL, the Court will enter an Order specifying the role and duties of the GAL; Defendant's $10,000.00 deposit into the registry of the Court and the $500,000.00 bond shall, (a) serve to satisfy attorney's fees and costs of litigation associated with any legal proceedings brought against the GAL by any person or entity in any court or tribunal of any jurisdiction, including disciplinary proceedings before any State Bar, associated with his or her duties as GAL of the Children, and (b) serve to satisfy any orders or judgments rendered against Defendant subsequent to entry of this Order, including but not limited to monetary judgments in favor of Plaintiff; should Defendant fail to deposit $10,000.00 into the registry of the Court and/or fail to obtain the herein described $500,000.00 bond on or before the expiration of ninety (90) days from December 19, 2005, then the custody and visitation provisions of this paragraph shall become the final Order of the Court.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Defendant is held in willful contempt of the power and authority of this Court for failure to comply with the herein described financial provisions of the Final Judgment and Decree and that, within thirty (30) days of the signing of this order, Defendant shall pay to Plaintiff the following sums: (a) $59,944.32 in mortgage principal and interest on 2179 Shillings Chase paid by Plaintiff, (b) $7,662.14 in fees paid by Plaintiff to halt foreclosure

proceedings on 2179 Shillings Chase, (c) $1,775.00 for maintenance and upkeep of 2179 Shillings Chase, (d) $28,045.07 as one-half of the net equity in 2179 Shillings Chase, (e) $137.50 for one-half of the cost of the appraisal of 2179 Shillings Chase, (f) $24,384.15 in costs paid by Plaintiff related to Defendant's unlawful removal of the Children to Harrison County, Mississippi. Such monies owed by Defendant to Plaintiff shall be reduced by the following monies owed by Plaintiff to Defendant pursuant to the Final Judgment and Decree; (a) $33,063.50 for division of the Principal Financial Deferred Compensation Account and (b) $4,247.50 as one-half of the cash surrender value of the Time/Fortis Life Insurance Policy. The provisions of this paragraph are the final Order of the Court.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that, within seven (7) business days of December 19, 2005, Plaintiff shall mail Defendant proof of medical and therapy costs not covered by insurance that were incurred subsequent to August 10, 2000. Within thirty (30) days of Defendant's receipt of such proof, Defendant shall pay to Plaintiff one-half of all such uncovered medical and therapy expenses, to wit: the sum of $3,880.79 for one-half of medical expenses not covered by insurance, and the sum of $10,300.00 for one-half of the cost of therapy sessions not covered by insurance.

SO ORDERED this the 30th day of January, 2006.

/s/ James G. Bodiford
JAMES G. BODIFORD
CHIEF JUDGE
COBB COUNTY SUPERIOR COURT

Presented by:
WARNER, MAYOUE, BATES & NOLEN, P.C.

/s/ Dennis G. Collard
DENNIS G. COLLARD
Georgia Bar No. 178101
Attorney for Plaintiff
Riverwood 100 Building
Suite 2300
3350 Riverwood Parkway
Atlanta, Georgia 30339
(770) 951-2700

CERTIFICATE OF SERVICE

This is to certify that I have delivered via U.S. Mail a copy of the foregoing Order to the following:

Wendy Titelman
P.O. Box 653
Woodstock, NY 12498

John Mayoue
Dennis Collard
Pamela Gray
Riverwood 100 Bldg., Ste. 2300
3350 Riverwood Parkway. S.E.
Atlanta, GA 30339

This 30th day of January.

/s/ Leanne E. Dolan
Law Clerk to Chief Judge James G. Bodiford
Cobb Superior Court

APPENDIX E

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ANDREW CHARLES TITLEMAN
Plaintiff

VS.

WENDY J. TITLEMAN
Defendant

CIVIL ACTION
NUMBER
98-1-5890-33

ORDER

The within and foregoing matter having come before this Court, September 20, 2000, for an emergency hearing on the Guardian Ad Litem's Motion. The following individuals having been present, Diane Woods, Guardian Ad Litem; George Washington, Supervisor of Cobb County Department of Children Services; Andrew Titleman; Pam Gray and John Mayoue, Attorneys for Mr. Titleman. Wendy J. Titleman having notified the Court by both calling and faxing a letter on this date having requested a continuance in this matter. The Court hereby DENIES said request for continuance.

The Court having heard the report from the Guardian Ad Litem and testimony from George Washington and having received a written report from H. Elizabeth King, PHD the Court hereby returns the minor children to the custody of Andrew Titleman. Andrew Titleman shall have custody pursuant to the Emergency Order of March 2, 2000 and the final judgment and decree of August 4, 2000.

It is ordered that Wendy Titleman shall have NO VISTATION OR TELEPHONE CONTACT with the minor

children until further order of this court. It is further ordered that Mrs. Titleman and her relatives are hereby restrained and enjoined from being within 3,000 yards of the children, the father, or the father's extended family members.

It is further ordered that the father can and shall have visitation with the minor children at their school. It is further ordered that the Guardian Ad Litem shall retain in her files all reports, records, and court documents generated as a result of the Mississippi Court's intervention.

SO ORDERED this the 20th day of September, 2000.

/s/ James G. Bodiford
JAMES G. BODIFORD
JUDGE
COBB SUPERIOR COURT

PRESENTED BY;

/s/ Diane Woods
DIANE WOODS
GUARDIAN AT LITEM

APPENDIX F

IN THE SUPERIOR COUFT OF COBB COUNTY
STATE OF GEORGIA

ANDREW C. TITLEMAN,
PLAINTIFF,

v.

WENDY J. TITLEMAN,
DEFENDANT.

CIVIL ACTION

FILE NO. 98-1-05890-33

EMERGENCY ORDER

The within and foregoing matter having come before the Court on the Guardian ad Litem's motion for emergency hearing and the court having received testimony from the court-appointed custody evaluator and having heard argument by both counsel for the Plaintiff and the Guardian ad Litem, the following is the Order of the Court until further hearing in said matter:

1.

The Court's previous Order granting Plaintiff and Defendant joint legal and physical custody is hereby modified in that Plaintiff shall now be the children's primary physical custodian and the children shall reside exclusively with Plaintiff.

2.

Defendant shall have supervised visitation with the minor children on Monday nights from 6:00 p.m. until 8:00 p.m., on Thursday nights from 6:00 p.m. until 8:00 p.m., and on Sundays from 10:00 a.m. until 6:00 p.m. Supervision shall be provided by an individual approved

by the Guardian ad Litem. Visitation supervisors shall not permit the Defendant to speak with the minor children about the merits of this pending action or any event, individual, or allegation associated with this matter. The expense of supervision shall be paid from the parties' funds on deposit in the escrow account of Defendant's attorney. The issue as to how these expenses shall be apportioned will be reserved until final hearing by the Court.

3.

Defendant shall have the opportunity to speak with the minor children over the telephone on Tuesdays, Wednesdays, Fridays, and Saturdays between the hours of 7:00 p.m. until 8:00 p.m., with the understanding that the Plaintiff will monitor the telephone calls and will discontinue the telephone calls if Defendant speaks with the minor children about the merits of this pending action or any event, individual, or allegation associated with this matter. Both the Plaintiff and the Defendant shall have the right to tape record these conversations. Neither of the parties nor their designees nor representatives shall cause the children to be videotaped.

4.

Neither parent shall visit the children at their school and only the Plaintiff or his designee shall have the right to remove the children from their classes or from school property.

5.

Within a reasonable period of time the Guardian ad Litem shall meet with the minor children and explain to them in an age-appropriate manner the actions taken by the Court. Furthermore, the Guardian ad Litem shall

timely notify the children's school of the relevant terms of this Emergency Order.

6.

The minor children shall remain in counseling with H. Elizabeth King, Ph.D.

SO ORDERED this 2nd day of March, 2000.

/s/ James G. Bodiford
JAMES G. BODIFORD, JUDGE
SUPERIOR COURT OF COBB COUNTY

Presented by:

/s/ Diane Woods
Diane Woods, Guardian ad Litem
State Bar Number 533070
HUFF, WOODS AND HAMBY
707 Whitlock Avenue, G-5
Marietta, Georgia 30064-3033
770-429-1001

Consented to as to form:
/s/ Pamela J. Gray
Attorney for Plaintiff
State Bar Number 101135
WARNER, MAYOUE & BATES
Riverwood 100 Bui'ding
3350 Riverwood Parkway, Suite 2300
Atlanta, Georgia 30339

/s/ Hylton B. Dupree, Jr. (w/express permission by
Attorney for DefendantD. Woods)
State Bar Number 234600
DUPREE, JOHNSON, POOLE & KING
P.O. Box 525
Marietta, Georgia 30060

APPENDIX G

IN THE CHANCERY COURT
OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

WENDY TITELMAN	PLAINTIFF
vs.	NO. 00-02200
ANDREW CHARLES TITELMAN	DEFENDANT

AGREED ORDER

There came on for hearing the above cause on the 15th of September, 2000, upon the emergency *Ex Parte* Relief, and the Court having reviewed the matter and the argument of counsel, and the parties having stipulated to and agreed on this Order, the Court does herein find, order and adjudge as follows:

The Court has jurisdiction over this matter only on an Emergency basis. The Court has no jurisdiction under the PKPA or the UCCJA to enter any sort of permanent order or modification. This court recognizes and grants full faith and credit to the judgments of the State of Georgia pertaining to these two parties.

That temporary legal and physical custody of the two minor children: Alexandra and Jennifer Titelman, be and is hereby granted unto the Georgia Guardian ad Litem (GAL), J. Diane Woods, Esq., and said child shall be immediately released unto her. The Harrison County Family Court Shelter facility is hereby authorized to release said children unto said GAL.

The Gal is hereby ordered and directed to:

Not turn over the children to either of the parents without a further court order from the State of Georgia.

Report to the Georgia Department of Children and Family Services and the judge who is assigned to this case, Hon. James Bodiford, all allegations of abuse or neglect raised by the mother. Further, the GAL shall deliver to the Georgia Department of Children and Family Services and the judge all reports and narratives of Dr. Donald Matherne.

That this court declines further jurisdiction and defers all further actions regarding these children to the appropriate courts of Georgia. The actions of this court were and are designed to protect the best interests of the children consistent with both federal and state law regarding interstate custody disputes. This court takes no position as to the truth or lack thereof as to the allegations raised, however, the court has acted to provide an appropriate and legal forum in which to decide these issues. The court notes that the children have not resided in this state for six months, there are no minimum contacts with this state, no allegations – even if true – are alleged to have occurred in the State of Mississippi.

The GAL consents to this order and agreed to abide by the terms herein. No one shall discuss the allegations of abuse without permission from the courts of Georgia.

So ordered and Adjudged, this the 15th day of September, 2000.

/s/ Wesley Teal
CHANCELLOR

APPROVED AND AGREED TO:

/s/ Wendy Titelman
PLAINTIFF

/s/ Andrew Titelman
DEFENDANT

/s/ Diane Woods
GUARDIAN AD LITEM

APPENDIX H

SUPREME COURT OF GEORGIA
Case No. S03A1159.

Atlanta Dec 1 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

WENDY J. TITELMAN et al. v.
COBB COUNTY JUVENILE COURT

It is ordered that the style of this case be corrected to read as follows:

WENDY J. TITELMAN et al. v.
JUANITA STEDMAN, PRESIDING JUDGE

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynn M. Stinchcomb, Chief Deputy Clerk

In the Supreme Court of Georgia

Decided: DEC 1 2003

S03A1159, TITELMAN et al. v. STEDMAN

CARLEY, Justice.

After Ms. Wendy J. Titelman lost custody of her two daughters to their father, she and others presented to the Juvenile Court of Cobb County for filing a petition for adjudication of deprivation. Appellants subsequently filed a petition for mandamus in superior court, alleging that Judge Juanita Stedman (Appelee) refused to allow filing of the deprivation petition or to sign any order or provide any other written documentation of the denial of filing. The superior court dismissed the petition for mandamus, finding that such relief was not appropriate. Appellants appeal from this order.

Under the Civil Practice Act (CPA), "[e]xcept when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk." OCGA § 9-11-58 (a). This portion of the statute was adopted verbatim in Uniform Juvenile Court Rule 17.1. See English v. Milby, 233 Ga. 7, 9-10(1)(209 SE2d 603) (1974) (sections of the CPA may be adopted for the juvenile courts). Very similar language is also found in the Appellate Practice4 Act (APA): "The filing with the clerk of a judgment, signed by the judge, constitutes the entry of a judgment within the meaning of" the APA. OCGA § 5-6-31. Under the case law, "[it is best to think of three requirements. The adjudication must be reduced to (1) writing, then (2) signed by the judge and finally, (3) filed with the clerk of the court." Gregory, Ga. Civil Practice § 7-4, p. 574 (2d ed. 1997). "'What the judge orally declares is no judgment until it has been put in writing and entered

as such.'" [Cit.]" State v. Sullivan, 237 Ga. App. 677, 678 (516 SE2d 539) (1999) (involving "[t]he oral declaration of [a] juvenile judge").

Furthermore, "[t]he filing with the clerk of a judgment, signed by the judge, constitutes the entry of the judgment, and, unless the court otherwise directs, no judgment shall be effective for any purpose until the entry of the same...." OCGA § 9-11-58 (b). See also Uniform Juvenile Court Rule 17.1. ""[U]ntil an order is signed by the judge (and is filed) it is ineffective for any purpose." (Cit.)' [Cit.]" State v. Sullivan, supra at 678. Therefore, this Court has held that, under the CPA, "[t]here can be no appeal from an oral announcement that a judgement will be rendered, since no judgment is effective until it is signed by the judge and filed with the clerk. [Cit.]" Crowell v. State, 234 Ga. 313 (215 SE2d 685) (1975). This rule is also compelled by force of the APA

> Under [that] Act the well established rule that "what the judge orally declares is no judgment until it has been put in writing and entered as such," is still of force, and both a written judgement and its entry by filing the writing with the clerk are essential prerequisites to an appeal. [Cits.]

Boynton v. Reeves, 226 Ga. 202, 203 (173 SE2d 702) (1970). Accordingly, "'(i)t is elementary that an oral order is not final nor appealable until and unless it is reduced to writing, signed by the judge, and filed with the clerk.' [Cits.]" (Emphasis supplied.) Smith v. State, 242 Ga. App. 459 (530 SE2d 223) (2000). Continued adherence to this rule is supported and mandated not only by statutes and cases, but by the rationale underlying it: ""'In the absence of a judgment in writing no question for decision is presented to the appellate court. (Cits.)'" [Cit.]' Bishop v. State, 176 Ga. App. 357, 358 (335 SE2d 742) (1985). See also

Seabolt v. Seabolt, 220 Ga. 181 (1) (137 SE2d 642) (1964). That rationale applies equally whether a trial court precludes further legal proceedings by fuling on the merits of a proceeding filed in that court or by denying the filing of a petition or other pleading.

OCGA § 9-11-58 (a) and Uniform Juvenile Court Rule 17.1 mandate that the trial judge, in the absence of an explicit statutory exception, sign "all judgments ...." Indeed, in an appeal purportedly from an oral ruling, this Court remanded the case and required the trial court to enter a written judgment, without prejudice to the right to file a subsequent appeal. Crowell v. State, supra. Thus, trial courts have a clear legal duty to enter all of their judgments, including those which deny the filing of an initial pleading.

Because the trial court's entry of a written order denying filing is an appealable judicial act, mandamus is not an available means of reviewing the propriety of that ruling. Barber Fertilizer Co. v. Chason, 265 Ga. 497 (458 SE2d 631) (1995). See also Grier v. Peed, 276 Ga. 521, 522 (578 SE2d 861) (2003); Smith & Wesson Corp. v. City of Atlanta, 273 Ga. 431, 433-434 (1) (543 SE2d 16) (2001). However, mandamus is an available remedy for a trial court's failure to carry out an administrative act, "when 'the law has prescribed and defined the duty to be performed with such precision and certainty as to leave no room for the exercise of judgment or discretion.' [Cit.]" Henderson v. McVay, 269 Ga. 7-8 (1) (494 SE2d 653) (1998). OCGA § 9-11-58 (a), Uniform Juvenile Court Rule 17.1, and applicable case law do not leave a trial court any room to exercise its discretion by orally announcing a judgment, but declining to enter it. Furthermore, where a trial judge refuses to permit the filing of a petition and fails to perform her clear legal duty to enter a written order, an appeal is not possible. In that circumstance, therefore,

mandamus is appropriate, not to review the propriety of the denial of filing, but to compel the trial court to enter a written order form which an appeal can be taken. Compare Grier v. Peed, supra at 521.

In their petition for mandamus, Appellants did not only assert that the denial of filing of the deprivation petition was erroneous. They also complained of Appellee's refusal to sign any order or to provide any other written documentation of the denial of filing, and prayed that a writ of mandamus be issued ordering her to dispose of the deprivation petition according to law and to grant all other proper relief. Under these allegations, relief is available to Appellants in the form of an order that requires Appellee either (1) to sign and file with the clerk a written order denying filing of the deprivation petition, or (2) to permit the petition to be filed and proceed according to law. Therefore, the superior court erred in dismissing the petition for mandamus.

Judgment reversed. Sears, P.J., Thompson, J., and Chief Judge Hugh W. Stone and Judge Bensonetta Tipton Lane, concur. Fletcher, C.J., and Benham, J., dissent. Hunstein, J., disqualified. Hines, J., not participating.

S03A1159, TITELMAN et al. v. STEDMAN

FLETCHER, Chief Justice, dissenting.

Because the juvenile court code provides a specific exception to the requirement of a written order denying filing, I respectfully dissent.

On August 4, 2000, following Appellant's divorce from her husband, a trial court awarded custody of the couple's two daughters, aged 6 and 8, to husband. A custodial modification action is apparently pending in Cobb County.[1] On June 10, 2002, Appellant and 29 other individuals presented to the Cobb County Juvenile Court for filing a petition for adjudication of deprivation, alleging that the daughters were being subjected to sexual abuse by their father. Attached to the petition as exhibits were (1) reports from two psychologists who interviewed the older child, (2) the report of a psychologist who reviewed a videotape interview of the children conducted by Cobb County Department of Family and Children's Services and other records, (3) letters from five individuals, including personnel from the agency charged with supervising Appellant's visitation with the children, (4) letters from two individuals who observed behavior on the father's part that they considered suspicious, (5) a letter from an individual who states she observed the father's inappropriate behavior with the younger daughter, (6) the September 2000 report of an out-of-state psychologist who interviewed the children, and (7) an April 2001 letter from jurors who acquitted Appellant of various charges in Cobb County stemming from her taking the children to see the out-of-state psychologist, stating, among other things, the

[1] No. 00-10-8035-33. A custody action pending in Harrison County Chancery Court of Mississippi, First Judicial District, No 00-0200, has been dismissed.

jurors' belief that the state's experts who concluded that no abuse occurred were not credible.

An employee of the Juvenile Court refused to allow the filing, and no written order was issued. Within 30 days, Appellant filed a petition for mandamus in the Court of Appeals seeking to require the Juvenile Court to file the petition. The Clerk of the Court of Appeals refused to accept the petition for filing and returned the papers to Appellant by letter dated June 20, 2002.[2] On July 9, 2002, Appellant filed a writ of mandamus in this Court, which was dismissed on the ground that an original writ of mandamus must be filed in superior court.[3] On August 8, 2002, Appellant filed her petition in the Superior Court of Cobb County seeking a writ of mandamus to require the juvenile court to file the petition. The superior court concluded that the deprivation petition was really a custody challenge and dismissed the mandamus petition.

This Court has previously recognized that the legislature intended for the juvenile courts to have their own "distinctive rules of procedure."[4] In accordance with this legislative intent, we have long held that the Civil Practice Act is not generally applicable to juvenile courts.[5] OCGA § 15-11-37 is a clear example of the unique procedural rules that govern juvenile courts. It requires that a petition alleging delinquency, deprivation, or unruliness shall not be accepted for filing unless the

---

[2] The clerk's letter appears as an exhibit in the record of Titelman v. Cobb County Juvenile Court, S0201606.

[3] Titelman v. Cobb County Juvenile Court, S0201606 (July 18, 2002).

[4] English v. Milby, 233 Ga. 7, 9 (209 SE2d 603) (1974)

[5] Id.

juvenile court "or a person authorized by the court has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child." Because there is a specific requirement of an endorsement before filing, basic rules of statutory construction require the conclusion that nothing is required to refuse filing.[6] The lack of a requirement for a written order denying filing is in keeping with the "basic philosophy that [juvenile] matters shall be handled informally, if at all possible."[7] It is also in keeping with the whole tenor of the Juvenile Court Rules, which provide for all manner of informal dispositions.[8] I would not dispute that the requirement of a written order is desirable, but I believe it is up to the legislature to draft that change in the law.

Because I believe the decision to deny filing was appealable without a written order, the superior court did not err in dismissing the petition for mandamus.[9] Nevertheless, because of the unusual procedural circumstances of this case and in the interest of judicial economy, I would at this time consider the merits of Appellant's contention that the Juvenile Court abused its discretion in denying filing.

I am authorized to state that Justice Benham joins in this dissent.

---

[6] Morton v. Bell, 264 Ga. 832, 832-833 (452 SE2d 103) (1995).

[7] Lane v. Jones, 244 Ga. 17, 19 (257 SE2d 525) (1979) (quoting official comment to prior version of OCGA § 15-11-37).

[8] See Juvenile Court Rules 4.1 ("intake officer may elect to informally adjust, divert, or recommend dismissing case"), 4.2 (screening process may result in "other appropriate action"), 4.3 (intake officer may withhold filing of petition and proceed with informal adjustment).

[9] Barber Fertilizer Co. v. Chason, 265 Ga. 497 (458 SE2d 631) (1995).

APPENDIX I

Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011
July 5, 2007

Ms. Wendy Jane Titelman
P.O. Box 54181
Cincinnati, OH 45254

Re: Wendy Jane Titelman
v. Andrew Charles Titelman
Application No. 07A2

Dear Ms. Titelman:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on July 5, 2007 extended the time to and including September 7, 2007.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk
by /s/ Erik A. Fossum
Erik A. Fossum
Case Analyst

NOTIFICATION LIST

Ms. Wendy Jane Titelman
P.O. Box 54181
Cincinnati, OH 45254

Clerk
Supreme Court of Georgia
244 Washington Street
Suite 572
Atlanta, GA 30334

APPENDIX J

FILED: June 14, 2006

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ANDREW CHARLES TITLEMAN,

Plaintiff,

CIVIL ACTION
FILE NO. 98-1-5890-33

vs.

WENDY J. TITLEMAN,

CIVIL ACTION
FILE NO. 00-108035-33

Defendant.

ORDER

Having reviewed briefs and heard oral arguments on Defendant's April 17, 2006 Emergency Motion for the State of Georgia to Pay Costs of Record Preparation for Appeal ("Defendant's Motion"), the Court finds the following:

1.

The assertion contained in Defendant's Motion that this Court has terminated her parental rights is false, as this Court has only modified visitation and custody as between the parties in its Order of January 30, 2006; no party has petitioned the Court to terminate either of the parties' parental rights and no such proceedings have occurred before this Court.

2.

The assertion contained in Defendant's Motion that this Court has held her in criminal contempt is false, as this Court held Defendant in civil contempt in its Order of January 30, 2006; no party has petitioned the Court to hold Defendant in criminal contempt and no such proceedings have occurred before this Court.

3.

Defendant has requested that the Clerk of the Superior Court of Cobb County prepare and send the Record of Proceedings before this Court (the "Record") to the Supreme Court of Georgia

4.

Defendant's Motion does not cite authority that would allow this Court to either waive the fees charged by the Clerk of Court to prepare the record for appeal or to order the State of Georgia to pay such fees on Defendant's behalf. M.L.B. v. S.L.J, 519 U.S. 102, 117 S. Ct. 555 (1996), cited by Defendant, involved an appellant whose parental rights had been terminated, not a case involving modification of custody and visitation. In Nix v. Department of Human Resources, 236 Ga. 794, 795, 225 S.E.2d 306 (1976), which was not cited in Defendant's Motion, the Supreme Court of Georgia held that termination proceedings are unique and therefore not subject to the general rule that civil appellants must bear the costs of their own appeal. Further, in Brand v. Montega Corp., 233 Ga. 35, 35, 209 S.E.2d 583 (1974), also not cited in Defendant's Motion, the Supreme Court of Georgia held that the expense of preparing the entire trial transcript must be borne by the appellant, even where the appellant filed a pauper's affidavit.

5.

Having found that this Court lacks legal authority to either waive the fees charged by the Clerk of Court to prepare the Record for appeal or to order the State of Georgia to pay such fees on Defendant's behalf, this Court makes no finding as to Defendant's indigency.

IT IS THEREFORE HEREBY ORDERED AND ADJUDGED that Defendant's April 17, 2006 Emergency Motion for the State of Georgia to Pay Costs of Record Preparation for Appeal is DENIED, in toto, and IT IS FURTHER HEREBY ORDERED AND ADJUDGED that, within ninety days of this Court's June 2, 2006 holding, Defendant shall pay the Clerk of the Court all costs of preparing and sending the Record to the Supreme Court of Georgia.

SO ORDERED this 12th day of June, 2006.

/s/ James G. Bodiford, Chief Judge,
Superior Court of Cobb County

Presented by:
WARNER, MAYOUE, BATES & NOLEN, P.C.

/s/ Dennis G. Collard
Georgia Bar No. 178101
Attorney for Plaintiff Riverwood 100 Building
Suite 2300
3350 Riverwood Parkway
Atlanta, Georgia 30339
(770) 951-2700

CERTIFICATE OF SERVICE

This is to certify that I have this date place a copy of the attached order in the United States Mail to the following:

Merle J. Leroux
Dennis Collard
3350 Riverwood Parkway
Suite 2300
Atlanta, Ga. 30339

Ms. Wendy J. Titelma, pro se
P.O. Box 54181
Cincinnati, Ohio 45254-0181

This 14th day of June, 2006.

/s/Jan Porter
Administrative Assistant to
Chief Judge James G. Bodiford

Riverwood 100 Building
Suite 2300
3350 Riverwood Parkway
Atlanta, Georgia 30339
(770) 951-2700

APPENDIX K

TERMINATION OF PARENTAL RIGHTS STATUTE
O.C.G.A. § 15-11-94 (2007)

§ 15-11-94. Grounds for termination; other dispositions

(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home. If the court finds clear and convincing evidence of the circumstance provided in paragraph (5) of subsection (b) of this Code section, the court shall presume that termination of parental rights is in the best interest of the child.

(b) Except as provided in [the statute related to unmarried fathers who have not legitimated children], the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) A decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent,

guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The parent has abandoned the child or the child was left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child;

(4)(A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral

condition and needs of the child;

(ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;

(iii) Conviction of the parent of a felony and imprisonment therefore which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

(i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;

(ii) To provide for the care and support of the child as required by law or judicial decree; and

(iii) To comply with a court ordered plan designed to reunite the child with the parent or parents; or

(5) The parent has been convicted of the murder of the child's other parent.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is a deprived child.

APPENDIX L

PARENTAL POWER STATUTE
O.C.G.A. § 19-7-1 (2007)

§ 19-7-1. In whom parental power lies; how such power lost; recovery for homicide of child

(a) Until a child reaches the age of 18 or becomes emancipated, the child shall remain under the control of his or her parents, who are entitled to the child's services and the proceeds of the child's labor. In the event that a court has awarded custody of the child to one parent, only the parent who has custody of the child is entitled to the child's services and the proceeds of the child's labor.

(b) Parental power shall be lost by:

(1) Voluntary contract releasing the right to a third person;

(2) Consent to the adoption of the child by a third person;

(3) Failure to provide necessaries for the child or abandonment of the child;

(4) Consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time;

(5) Consent to the marriage of the child, who thus assumes inconsistent responsibilities; or

(6) Cruel treatment of the child.

* * *

UNFITNESS OF PARENT-annotations to parental power statute

DETERMINATION OF UNFITNESS must be based on parent's present condition. Bozeman v. Williams, 248 Ga. 606, 285 S.E.2d 9 (1981).

Evidence adduced to prove parental unfitness must pertain to present rather than past misconduct. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983).

METHOD OF DEPRIVING NATURAL PARENT OF CHILD CUSTODY other than those enumerated in former Code 1933, § 74-108 (see O.C.G.A. § 19-7-1) was upon clear and satisfactory showing that parent was an unfit person to have such custody. Patman v. Patman, 231 Ga. 657, 203 S.E.2d 486 (1974).

LEGAL AND PARENTAL RIGHT TO CUSTODY IS SUBJECT TO CHALLENGE on ground of unfitness for trust. Peck v. Shierling, 222 Ga. 60, 148 S.E.2d 491 (1966), later appeal, 223 Ga. 1, 152 S.E.2d 868 (1967).

FINDING OF UNFITNESS MUST BE SUPPORTED by clear and convincing evidence. Mathis v. Nicholson, 244 Ga. 106, 259 S.E.2d 55 (1979); Bozeman v. Williams, 248 Ga. 606, 285 S.E.2d 9 (1981); In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983).

CHALLENGE TO FITNESS MUST BE BY CLEAR AND SATISFACTORY PROOFS, and for grave and substantial cause. Perkins v. Courson, 219 Ga. 611, 135 S.E.2d 388 (1964); Peck v. Shierling, 222 Ga. 60, 148 S.E.2d 491 (1966), later appeal, 223 Ga. 1, 152 S.E.2d 868 (1967).

PROOF REQUIRED TO SUSTAIN CHALLENGE TO

PARENT'S FITNESS.—Parent's prima facie right of custody of infant, when resisted upon ground of unfitness or other cause, must be established by clear and satisfactory proof. Hill v. Rivers, 200 Ga. 354, 37 S.E.2d 386 (1946).

Right to custody may be lost on ground of unfitness only if it is shown by clear and satisfactory proof that circumstances of case justify court in acting for best interest and welfare of child. Bowman v. Bowman, 234 Ga. 348, 216 S.E.2d 103 (1975).

UNFITNESS JUSTIFIES COURT IN ACTING FOR CHILD'S BEST INTEREST.—A parent may lose right to custody if found to be unfit. Unfitness of parent should be shown by clear and convincing evidence that circumstances of case justify court in acting for best interest and welfare of child. White v. Bryan, 236 Ga. 349, 223 S.E.2d 710 (1976); Childs v. Childs, 237 Ga. 177, 227 S.E.2d 49 (1976), later appeal, 239 Ga. 304, 236 S.E.2d 646 (1977).

THAT CHILD MIGHT HAVE BETTER FINANCIAL, EDUCATIONAL OR MORAL ADVANTAGES elsewhere is insufficient. Peck v. Shierling, 222 Ga. 60, 148 S.E.2d 491 (1966), later appeal, 223 Ga. 1, 152 S.E.2d 868 (1967).

PARENTAL FITNESS.—Fitness was not necessarily synonymous with absence of conduct penalized by former Code 1933, §§ 74-108-74-110 (see O.C.G.A. §§ 19-7-1 and 19-7-4). Fact that parent had not forfeited or relinquished parental right by any of the modes of these sections did not establish parent as fit. Perkins v. Courson, 219 Ga. 611, 135 S.E.2d 388 (1964).

WHERE APPELLATE COURT WILL NOT UPSET FINDING THAT PARENT IS UNFIT.—Where controlling issue was whether or not petitioners lost right of parental

power and control, evidence was in sharp conflict, and trial judge resolved that conflict against parent petitioners and awarded custody of child to respondent, appellate court would not say that judge of court below abused the judge's discretion. Byers v. Loftis, 208 Ga. 398, 67 S.E.2d 118 (1951). Where evidence amply authorizes, although it does not demand, finding that parent is not a fit and proper person to have custody of children and that it is in best interests and welfare of children that they be awarded to other person, appellate court will not substitute its judgment for that of trial judge, absent abuse of legal discretion. Adams v. Kirkland, 218 Ga. 512, 128 S.E.2d 730 (1962).

When the trial court makes a finding of parental unfitness, the appellate courts will ordinarily not interfere with that finding, absent abuse of discretion. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983).

APPENDIX M

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

ANDREW CHARLES TITLEMAN,
Plaintiff, CIVIL ACTION

V. CASE NO. 00-108035-33

WENDY J. TITLEMAN,
Defendant. NONJURY
HEARING

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE JAMES G. BODIFORD, JUDGE, COBB JUDICIAL CIRCUIT, ON DECEMBER 19, 2005, IN MARIETTA, GEORGIA

* * *

[Pg. 7]

MS. WENDY TITELMAN: ... Especially in the contempt motion I have every right to counsel, in the entire case. I'm not an attorney. And to bumble or fumble through the proceedings is probably a very poor decision for both myself and the Court to have to endure the stumbling that I'm going to be doing all through the day and also then not to have all the rights that I should be afforded in the case because I don't know the law.

* * *

MS. WENDY TITELMAN: There are also other motions, such as the applicability of res judicata and the motion to dismiss the September 20th order that was filed quite sometime ago as well . the motion for an independent mental evaluation of the children. All of these things [Pg. 8] are extremely important to this case

and especially in any ruling of any matters that are to be heard today.

I want to object on the record to those not being set for hearing prior to this hearing or at least at this hearing. These matters have got to be heard.

* * *

[Pg. 76]

MS. WENDY TITELMAN: ... For the record, let me be absolutely clear in saying that I request custodial rights and visitation with Alex and Jenny to begin immediately. I demand that my rights as a parent be upheld and protected. My civil rights have been violated for many years.

Second, while I understand that the State of Georgia [Pg. 77] has undertaken several investigations and while I concede that those investigations purport to be complete, I respectfully disagree and I still stand here today, that there are valid allegations of child abuse, allegations which were wrongly discredited through a faulty investigation and in an effective child – ineffective child welfare system.

Accordingly, I have done everything within my legal rights to expose what I truly believe and what the most highly respected child abuse experts in this country and child advocates also believe, that the outcries made by Alex and Jenny to me and to others were never properly investigated.

Specifically, Alex and Jenny's guardian ad litem and the court-appointed custody evaluator relied on a controversial theory, the so-called syndrome, parental alienation syndrome or PAS. Their reliance on PAS is evident from the custody evaluations in the court's file,

and I would ask the Court to now take judicial notice of these reports.

The first – I think it was February 18, 2000 emergency hearing, which speaks only to the parental alienation syndrome and how valid it is in this; also, to the report by Dr. King which she submitted to the Court I think just maybe two days or one day prior to that and [Pg. 78] submitted to me one hour prior to that emergency hearing, which did not allow me any due process.

In 2000, the American Bar Association, the American Psychological Association and related professional organizations were critical of PAS and urged caution to legal professionals when discussing or urging PAS as a defense to custody cases.

To date the DSM-IV does not include PAS as a valid or recognized diagnosis or condition.

It was not until 2004, however, that the National Council on Family and Juvenile Court Judges expressed and rejected PAS and declared it inadmissible.

[Pg. 79] * * *

Hal Carter in court stated that, when you build a house on faulty foundation, the house will fall. And that's exactly what this case is. It was built on faulty foundation, and that is one of the reasons it's so important for that res judicata not be considered in this case, that we go back and we look at the whole picture of abuse because it was built on faulty information.

[Pg. 82] * * *

I'm not alone in my belief that Alex and Jenny have not been adequately protected.

As the Court knows, several qualified and distinguished professionals share this belief, including the recent past president of the American Psychiatric Association. Numerous lay persons also share this belief, including the jury in the criminal trial of the State of Georgia versus Wendy Titelman.

Fourth, and finally, Alex and Jenny must have an independent mental evaluation to determine their emotional state and to ensure their well-being.

There has been no competent evidence that I am an unfit mother ever or that a total lack of communication or contact between my girls and me is in their best interests. In fact, just the opposite. The research shows that this is extremely damaging to children.

Without regard to whether the child abuse allegations are ever believed or resolved, I have rights as a parent, and I demand that this Court recognize and uphold those rights.

* * *

[Pg. 395]

MS. WENDY TITELMAN: I'd like to have the opportunity to make my closing statement.

THE COURT: Who are you making it for? Are you making it for the media? Are you making it for your friends? Are you making it so you can get some more money? Who are you making it for?

You're not making it to me, obviously, because you don't think I'm listening. So why are we wasting our time? That's a fair question.

Now, how about giving me an answer?

MS. WENDY TITELMAN: I will be happy to.

Six years ago this should have been handled very privately and very competently. It wasn't. I tried very, very hard and I followed my attorney's instructions to be [Pg. 396] patient. Wait.

You have to keep sending them back to their father and they'd cry and they'd be terrified and people reported that and the reports continued. And there still was no protection, absolutely none. And things became very desperate for me.

How do you protect your children that you adore, you love, you cared for all their life? And then, all of a sudden you see their lives absolutely being destroyed and ruined and thrown apart and a court who doesn't want to believe – believe the children.

And then you find out that what PAS is and that – how it's been used in this case. And then you understand the basis for how this has all happened. And then you have to find some other way to try to correct the problem.

So I reached out to people. I had to reach out to the media. This shouldn't have had to go to the media, but I had to reach out to others.

And so no. It's not a media campaign but it is a campaign to try to get help, to try to hear my children's voices.

I have gone to these doctors and said, am I wrong?

You say, how can you convince me that I'm wrong? Well, every single person, 100 percent of them that I have [Pg. 397] gone to have said, you're not wrong. There has never been so much evidence that I have seen in such a case.

THE COURT: The only person today – you have these – you have these army of folks that didn't bother to come today, including Matherne and – but the only person today out of all the different witnesses that came and said that they basically believed you was Dr. Silberg who, with all due respect, although I thought she was a good witness, is a hired gun. So we have had one hired gun to come in.

And Dr. Elizabeth King, George Washington, Lorita Whitaker, Bobbi Nelson and Frances Evans certainly didn't say any of that, did they?

So please stop telling me all these, all these thousands of individuals out there have found that you are correct when you haven't even brought – you brought one in.

MS. WENDY TITELMAN: There's not time and that's why I objected to a one-day hearing.

THE COURT: Well, I think the bottom line is you're finished. This is basically to get some more contributions for yourself and you're finished because I'm not going to allow the Court to be called biased one more time. Have a seat.

* * *

[Pg. 398] Mrs. Titelman has – the last five years has a scorched-earth policy. She and her group of kamikaze custody folks believe that Mr. Titelman is wrong, the prior judge was wrong, everybody that doesn't believe what she believes is wrong. And that's fine. Some people, they

decide that but they don't have a scorched-earth policy of doing everything that they possibly can to roll over the other side.

And she talks about Mr. Titelman and Mr. Titelman being a bully.

Ms. Titelman and her group of kamikazes are the biggest bullies this Court has ever seen in over 20 years. That's how they want to win.

And I think they're getting very upset because their bullying tactics seem to be going south on them.

And it's hard to take Mrs. Titelman seriously when she tells us about her children being molested and, yet, won't even appeal. She wants to complain about her attorneys. But if you listen very carefully, she wants to complain about everybody in the court system.

[Pg. 399] The only person that she – that she will agree with are those that agree with her. It's truly – you have always heard: It's my way or no way. That's Ms. Titelman.

And that's why we finally stopped it tonight when she called this Court biased for the very last time, the very last time ever in her lifetime that she will do that because I don't have to sit up here as a neutral independent arm's length person and take it.

I don't have to be – I don't have to fear you and your kamikaze parade. I don't have to fear it because I'm absolutely protected. I am protected in every possible way.

And the reason the kamikazes won't come after this Court is because they know there are more severe

implications than just financial ones, including loss of a lawyer's license, and that's what will stop most people from taking the final kamikaze trip.

For Ms. Titelman, there's nothing that James Bodiford or anybody else in the Georgia court system can do. Ms. Titelman will absolutely do what she wants to do. There is no court order that's ever going to constrain her. There's no court order that she's ever going to comply with if she thinks it's wrong. That's why the safety of the children must come first.

[Pg. 400] She will take those children in a New York minute if she gets the opportunity to do so. That's why I'm not going to allow it.

I was – as I had indicated before, Dr. Silberg, which was the only person, the only person whatsoever out of these band of folks – seems like Ms. Titelman could have brought at least more than one in. But Dr. Silberg was the only one that basically said, hey. I have some concerns with some of these professionals that were hired by both Mr. and Mrs. Titelman. I have got some concerns. And she said, I thought Dr. Matherne did a better job. I heard what she said.

Of course, she can't tell us, just like this judge can't say whether Andy Titelman has ever molested his children. I will never know that to an absolute, a mathematical certainty, and neither will anybody else.

The only person that really knows what happened at this point that's absolutely convinced in her own mind is Wendy Titelman and that scares the hell out of me because Wendy Titelman absolutely would believe and could pass a lie detector test. If anybody said, has Andy Titelman

molested those girls? And she would say, absolutely. Correct.

And you would think, after you see a lie detector test, you would have thought that she would have witnessed [Pg. 401] it herself when, in fact, she has convinced herself it happened. And nobody, including as I have indicated earlier, George Bush or John Kerry or both, could convince her otherwise.

That's why Dr. Silberg's: Let's get everybody together will never work with Mrs. Titelman because, simply, she's not going to do what this Court says. She has absolutely disdain for this Court.

What's the saddest thing is, if you hear it, she hates Andy Titelman more than you love your children. That's as sick as it gets. That's as – that's as sick as it gets. And you just can't be forgiven for that, Mrs. Titelman.

We forgive a lot of people, but you can't be forgiven for hating somebody more than you love your children. And there's no way the judge can deal with that. So safety comes first for the children.

So here's what I'm going to do. I'm going to issue a temporary order in the visitation and custody.

Temporary legal and physical sole custody will remain with the father, will remain with Andrew Charles Titelman based on our record of proceedings that we had today.

Now, Mr. Titelman, it's not going to get any better for you. As long as the band of kamikazes are out there, they will continue to come after you.

[Pg. 402] But as long as they have nothing to lose whatsoever, especially financially, they will continue to come after you, and I'm not going to be able to protect you. I might even feel sorry for you in that but I'm not really interested in protecting you or Ms. Titelman. I am really interested in protecting the children.

I am going to allow the record to stay open because, whenever we have an allegation – in this case we have got an allegation that – although I don't think it was articulated very well, we do have this allegation hanging out there, this cloud of sexual abuse that happened after August 4th and it's there and I can't tell you absolutely that it didn't happen.

The problem with that kind of allegation is you throw it on the wall and it never ever, ever goes away.

The fact that Mr. Titelman has been charged with that, some people will always believe that he did it. And that's why – that's why the second worst thing that could happen to anybody – one, a child molester ought to be thrown in jail for the rest of their life.

But probably the second worst thing that could ever be done is one of the parents be charged falsely with child molestation.

And, by the way, folks, don't think people don't know that there are evil people in this world and they say, to [Pg. 403] get an advantage, I'll charge – I'll charge molestation. Oh, that's a perfect way to do it and especially if you're operating with a band of kamikazes. They know how to do it quicker and better than anybody else. They just get right to it. No. Let's not bring down a two-story building. Let's go after the World Cong- -- let's go after the World Trade Center.

So here's what I'm going to do because I do worry that – I worry that – that it certainly would help to have some professional take a look at it again.

But I'm thinking, who can I get as a professional? The only way that I know that I can get a professional is to protect them.

So here's what's going to happen. I'm going to leave the record open for 60 days. I will consider and probably appoint a guardian ad litem in this particular case and they can look at anything from August 4th all the way right up to today. So they can look at anything in five years.

They can visit with the children. They can talk to both sides.

By the way, that's two more things that Dr. Silberg did, although it's great to be an academic and to take a look at the record. It's certainly good to have somebody on the stand as happened today and look in their eyes and [Pg. 404]
cross-examine them. It's a great – it's a great truth serum.

But this Court will appoint a guardian ad litem to determine if it's appropriate for Mr. Titelman to have visitation because I'm not an expert in that and everybody knows that and I know it most of all.

But because we have got the scorched-earth policy, two things are going to have to happen. One, there's going to have to be a $500,000 bond for the benefit of the guardian ad litem. It's going to have to be filed with the court. This Court, James G. Bodiford, is going to have to approve the bond. I'm not going to delegate that to

anybody other than Ms. Dolin and myself. I'm going to talk to the insurance company, and that bond will be there to pay any attorney fees for any guardian ad litem that has to defend themselves against the kamikazes.

It will also pay any litigation expenses that they may incur, and it will also pay any judgment that was rendered against Mrs. Titelman or any of her attorneys.

So we're going to have a $500,000 bond and that will protect the guardian ad litem. That will surround the guardian ad litem so they can do their job, and it's almost like the immunity that surrounds the judge. So they can say, hey, if somebody – if they want to sue me, then I have – I have got an attorney that I can basically [Pg. 405] hire myself. They're going to pay all the litigation expenses.

And, by the way, when I find – when I get an abusive judgment against them, then that will be paid from the $500,000.

Additionally, Ms. Titelman, only Ms. Titelman will pay $10,000 in cash into the registry. Of course, that could be a cashier's check, and that will be the attorney fees for the guardian ad litem.

Now, where am I going to get? I'm hoping Ms. Titelman does that because I think a lot of this is just simply about getting money; let's see how much more money we can get and generate and this probably, hearing today, will generate a lot more money and let's just see where the money should flow. Should it flow to travel expenses or should it flow to something else or should it flow to a guardian ad litem?

And if she deposits the $10,000 and she has a bond that will be approved by me – and, basically, if we have a

bond from an insurance company that says, Judge, we understand that you're talking about – by the way, it includes that but it may not be – but it may not be limited, just those damages. I want to protect somebody from getting sued like all these folks got sued down in Federal Court. I want something to be there where they [Pg. 406] don't have to worry about they're going to have to give up their house to defend themselves.

But I'm not going to – if we have got an insurance company that said, hey, we trust Ms. Titelman and we're going to put up the $500,000 and we're okay with it, then it may actually help some ethical and professional behavior. And then I'm good to go.

Where am I going to et my guardian ad litem? I don't know.

But here's what I'm going to do. I'm simply going to convene the hearing. And it will be one of the most important hearings I have ever had in this case and I'm going to hear from both sides and I'm going to say, where do I get my guardian ad litem from? Where do I get them from?

I would say we couldn't possibly get one from Cobb County because anybody that's ever heard the Titelman case would run. If I paid them a hundred thousand dollars they would run.

But I will ask Mr. Mayoue and Ms. Titelman or hopefully her attorney and we will find out how I should go about getting a guardian ad litem, and let's let the guardian ad litem then talk to Ms. Titelman, Mr. Titelman, the children, Dr. Mayhurn or Matherne, Dr. Whoever, Dr. King, anybody the guardian ad litem wants to talk to.

[Pg. 407] And if the doctor needs to fly to – or if the guardian ad litem needs to fly to Seattle, if it needs to fly to Miami, anything they can do to help.

And then if the guardian ad litem comes back and says, Judge, I think you have got it wrong. I think you have got it wrong. Although there was a scorched-earth policy, I think it would be best for the children to visit with Mom and I have got some appropriate safeguards, then I'm for it because this is a – this is a – no visitation is an extreme.

I can't – I'm trying to think of anytime I had ever said a person can't visit with their children. And the only time I can ever remember doing it and we have done on a pretty routine basis is if just one party comes in and I believe that one party and they say, the other party is a drug user or the other party is a severe alcoholic and that other party doesn't come in. And I will say, all right. No visitation until a further hearing, till I can have both people.

I can't remember one time, Ms. Titelman, when somebody has come in and said, I want visitation, that I have said no. So that shows you – that shows you what I feel about this case.

I feel like Ms. Titelman has – and I want this in the order. I feel like Ms. Titelman on many ways has very [Pg. 408] little credibility. I do not trust Ms. Titelman. I fear for the safety of the children. I want all those findings.

Now on the other hand, Ms. Titelman did as well as any pro se litigant could possibly do, especially when she was emotionally involved. So she actually did a pretty good job here today. So it's obvious she's intelligent. It's obvious she's intelligent. But I absolutely believe she's got

some very poor advice, especially when she lectures the Court and talks about illegal *ex parte* hearing and illegal orders when we know, if it was that illegal – it must not be that illegal in that it's held up for five years without a challenge.

And we must know that Judge Woods – Judge Wood, Bo Wood's order was – must have been a pretty fine order because nobody appealed it. And we just have to use our common sense. We don't just use this emotion.

And the one thing we heard over and over today is every expert in America agrees with Wendy but they decided to stay home today. Isn't that sad that all those experts would allow this child abuse to go on and wouldn't even bother to come down to the Cobb County Superior Court where they could actually make a difference. But I suspect they will all be commenting now somewhere and tell us just how wrong we are, tell us how wrong and how [Pg. 409] backward this Court is. But they couldn't even appear and especially the miracle witness, Dr. Matherne.

I would have loved to have seen him because I would have loved to judge his credibility and I would have loved for him to be cross-examined because that would have given me perhaps some more information. And if he was as I had indicated before – if he was – if he was a pretty good witness like Dr. Silberg, although I certainly thought she was off base when she talked about, yes, we ought to reunify. That was way out in left field.

But if he was as good – if he was a good a witness as Dr. Silberg, that would have helped you today. But it's Ms. Titelman's obligation to come forward, especially after the scorched-earth proceedings in this case.

So the order will be a temporary order if we have not heard anything. I might have said 60 days. There's no reason to not make it 90 days. Let's make it 90 days. If we have not heard that, that's a final order of this Court.

Now, with the exception of the medical bills and counseling bills, the contempt money is a final order. And when Mr. Mayoue sends it in and I sign it, it's a final order ready to be appealed.

Let me just – let me just go over this to talk about – so all the different contempts, application for [Pg. 410] contempt, motion to dismiss contempt citation and motion for contempt regarding property, with the exception of those two small items, are all ready when it's signed to be appealed.

Application for sanctions will be sent to us in the mail and we will decide it there.

Motion to modify, modification of visitation and transfer motion, all of those are temporary but will be final unless a $500,000 bond is set in place that the judge approves and a $10,000 retainer is set in place.

Now, some people might say, well, Judge Bodiford, that is a large amount of money. It certainly is. It's a large amount of money. And unfortunately – unfortunately, it's going to jump right out.

Unfortunately, it has to be set that high in order to keep the kamikazes – the kamikazes up in the sky. That's what it's got to do and that's a sad day that the Court has to do that.

But, again, the protection of the children is the primary goal here and I'm going to make sure to protect them.

APPENDIX N

IN THE SUPERIOR COUFT OF COBB COUNTY
STATE OF GEORGIA

ANDREW C. TITLEMAN,
PLAINTIFF,

VS. CASE NO. 98-5890-33

WENDY TITLEMAN,
DEFENDANT.

- - -

PROCEEDINGS HELD BEFORE THE HONORABLE
JAMES G. BODIFORD, JUDGE,
ON THE 20TH DAY OF SEPTEMBER, 2000

* * *

[Pg. 2]
THE COURT: The court has received two faxes on the Titelman vs. Titelman case; one appears to be from Wendy Titelman – a handwritten letter.

Basically she says she was released from jail in Harrison County, Mississippi, "As you are aware for charges that I have not committed" and I don't know why she uses that phrase, so that is not for the truth of the matter asserted but that is what she says.

"I learned last night that a hearing is being held at 9:00 a.m. regarding Alexandra and Jennifer today. I do not have an attorney of record to represent me for this hearing and therefore am acting as my own counsel until I can confer with an attorney who practices in Georgia. As it is

impossible for me to be present for this hearing, I am requesting a continuance of this hearing" and it appears that it was faxed - - If the marking is correct, it was faxed about 7:01 a.m. today and it is signed "Mrs. Titelman".

Then I have a letter that was apparently faxed yesterday about 4:15 from Laurie Caldwell, Attorney At Law, in Gulfport, Mississippi, and she basically said - - without reading the entire letter, it says she has been representing Mrs. Titelman in Harrison County, Mississippi, and she said that Mrs. Titelman [Pg. 3] was released about 4 p.m. yesterday, September 19.

She is asking me to postpone the hearing in order to afford Mrs. Titelman some time to return to Georgia to retain counsel and appear for the hearing, so I have those two faxes.

I will address the motion for continuance. Mrs. Woods, you have asked for the hearing and I will ask you to respond to the motion for continuance.

MS. WOODS: I believe that Mr. Titelman has arranged a hearing scheduled for October 2 to deal with the contempt issues and the modification as well. The reason I would object to a continuance is on this basis; we have some matters that I considered to be of an emergency nature to the children and the well-being of the children and for that purpose, I cannot agree to a continuance.

* * *

[Pg. 4]
MS. GRAY: ...I am not sure we have got proper service on Mrs. Titelman for our application for contempt and motion to modify [Pg. 5] visitation. I am hoping to get service but I have no idea where she is right now.

THE COURT: According to this, she is at 18 East Beach Boulevard, Long Beach, Mississippi 39560. I will be glad to give yo a copy of the faxes that I have and they are public record. . . .

MS GRAY: I hope to get service on her and we would like to be heard on October 2 as well on the issue of attorney fees. A lot has been incurred in the last two weeks on this issue and we are not prepared to argue that today but we'll be prepared on October 2.

THE COURT: As for the emergency nature of this hearing today, I do find that it is an emergency and the children are in the custody of the state and the guardian is asking me today - - I believe she will be asking me to release them to the father who had been given custody in both the temporary hearing and a final hearing by two different Judges, so if these letters can be construed as a motion for continuance, I will deny same.

* * *

[Pg. 7]
MS WOODS: . . . W]hile no one can say one hundred percent that the children have [Pg. 8] not been sexually abused, I don't think anybody is qualified to say that they have not just because of the nature of the allegations that have been made but Dr. King and I believe that it would be in the best interests of the children to return them to their father.

* * *

[Pg. 9] . . . I would like Mrs. Titelman to be ordered along with any other relative of Mrs. Titelman to stay away from the children at least three thousand yards be it at the school or Mr. Titelman's home of the childrens' activities.

* * *

[Pg. 10]
BY MS. WOODS:

Q. Would you state your name.

A. George Washington.

Q. How are you employed?

A. Supervisor of Child Protective Services of Cobb County Department of Family and Children Services.

* * *

[Pg. 11]

Q. And have you had an opportunity to review all of the reports and documentation that has been provded to you pursuant to the order of the Mississippi Court?

A. Yes.

Q. And do you have a recommendation to the court today as to placement of the children following today's hearing?

A. Yes, at this point we see no information that would overturn the judge's earlier ruling that the custody should be with the father.

* * *

[Pg. 12]

THE COURT: The Court will issue the following order. Mrs. Woods will prepare the order.

Based upon the recommendation of Dr. King, who was the custody evaluator chosen by both parties, and the guardian ad litem, Diane Woods, and the Department of DFACS executive Mr. Washington, I find that the best interests of the children are to return them to the father pursuant to the temporary order and pursuant to the final order, I might add.

There will be no visitation at all by the mother until further hearing in this matter. The hearing may be held as early as October 2 so she would have an opportunity to come in and tell me why she believed that we should either go to supervised visitation or unsupervised visitation. The only thing, basically that I have changed at this point from the temporary emergency order which I issued earlier this year where I gave her supervised visitation is at this interim point, I am not giving her any visitation. That [Pg. 13] includes phone visitation. It's unfortunate when the court is forced to say that a mother cannot even visit with her children in person or by phone but Mrs. Titelman has shown us what she is going to do. She will steal the children if given that opportunity.

* * *

[Pg. 14]

I will add the further provision that Mrs. Titelman or her relatives cannot go within three thousand yards, as requested, because of the alleged taking on Labor Day weekend - -

APPENDIX O

IN THE SUPERIOR COUFT OF COBB COUNTY
STATE OF GEORGIA

ANDREW C. TITLEMAN,
PLAINTIFF,

VS. CASE NO. 98-5890-33

WENDY TITLEMAN,
DEFENDANT.

- - -

PROCEEDINGS HELD BEFORE THE HONORABLE
JAMES G. BODIFORD, JUDGE,
ON THE 4TH DAY OF OCTOBER, 2000

* * *

[Pg. 47]
THE COURT: Thank you. Here's the way - - here is my assessment ot it: My practical commonsense assessment of it is that I do have authority and I ought to be able to deal with it. But I am - - you know, when I was chief magistrate, there was a portion of the Code that said we could do substantial justice. Substantial justice may be exactly what Mr. Mayoue is arguing here today.

We may be just delaying the inevitable. But Ms. Portnoy has given me enough information here where I am not sure, although - - you know, the last thing we want to do is rule from the cuff. And so I'm going to give her a limited amount of time, basically, to give me this law.

It does appear to me that if I am not convinced by Ms. Portnoy's argument, at least the several different

arguments regarding venue in Mississippi and the application for appeal, it appears to me that even this might raise the frustration level higher, that if I hear her correctly, Judge, I want to be heard on the willfulness. I want to actually present evidence on the willfulness. And I think she would have a right - - my preliminary assessment is she'd have a [Pg. 48] right to do that.

So here is what I'm going to do: I am going to give you both a week, basically, to brief this for me. And I will do the best I can. That'll be - - today is the 4th. That's the 11th. I'll do the best I can to review it and basically issue a very cursory order, because I'm losing my law clerk. My law clerk is going - - we will be getting a new law clerk, so I will address each and every one of these points. In fact, you might want to submit a proposed order with findings of fact and conclusions of law.

And then we'll get this, assuming that I'm right - - my own Bodiford law just says right now, well, she can't do what she did and there ought to be some redress and it seems like it ought to be in Georgia and it seems like I ought to be able to hear it, but Ms. Portnoy has said, Judge, maybe you are not on the practical commonsense foundation that you think you are on.

Assuming that, I then further assume that she would have a right then to bring up witnesses and say, Judge, it's not willful. Lastly - - and you may not even want to - - you may not even want to address this point, but Mr. Mayoue, when he said, Judge, I want two things, that I want $56,000 and whatever and [Pg. 49] then two, I want whatever justice you can give me. I'm not sure there's a U.S. Supreme Court decision regarding contempt and criminal punishment. And I'm not so sure that – say Mr. Mayoue was correct and I said all right, Ms. Titelman, 20 days in the common jail of Cobb County. I'm not so sure how that

impacts, if it does, any criminal prosecution of the case. So I think rather to be safe than sorry - - I have nothing to do with the criminal prosecution - - that I may, even if I found that Ms. Titelman's conduct was egregious - - let's say I agreed with Mr. Mayoue, I may decide, well, I'm not going to address that because I may preempt some criminal prosecution.

Now that doesn't make a lot of sense, that you preempt a criminal prosecution, but I think there was a case in about 1993 in the U.S. Supreme Court that I had reviewed at one time that leads me to believe that that might be a gray area.

If that was important to counsel, Mr. Mahoue, I would like for you to address that, because if I was sure that I could punish in some way, I may very well punish.

* * *

[Pg. 51]

MS. PORTNOY: That makes sense to me. What that means is all these orders related to the [Pg. 52] contempts are nullities, when we dismiss our application for appeal, which we'll do today, then we're back to final judgment and decree.

MR. MAYOUE: Let's be clear about one thing, your Honor - - and I'd like Diane to address this, if she is willing to: There is an order dated September 20th that would not be affected by contempt. It's not an order of contempt. It is an order restricting contact with the children. That would no be annulled.

THE COURT: Well, let me - - can I give you some direction o this?

MR. MAYOUE: Yes, you may.

THE COURT: I'm not prejudging anything, but it seems to me that if you - - here is the cleanest and most efficient way to do it. We don't always like to be efficient, and sometimes being efficient just means that we don't get any justice: Mr. Mayoue dismisses his contempt action today. Ms. Portnoy dismisses the application for appeal. They have two agreements between themselves, as officers of the court, one, that that house will not close or the transaction that is pending will not take place until a further hearing in this matter, and, two, Ms. Portnoy will accept service for Ms. Titelman.

* * *

[Pg. 53]

THE COURT: I think maybe I have an answer.

MS. WOODS: Good. I am getting wound up.

THE COURT: Ms. Portnoy, let's say there's an agreement, that there's an agreement. Don't anybody get upset until you hear me. Let's say there is an agreement that the September 20th order is not a nullity or void or no longer in effect. That might be words that are more palatable for everybody. Do [Pg. 54] you further have an agreement that Ms. Titelman, until you can get a hearing - - and you can get a hearing in this court in a short period of time - - until - - that Ms. Titelman will not try to exercise any visitation until further hearing in this matter?

MS. PORTNOY: The problem is - - and I understand the children are traumatized. So many things have occurred to them that it can't be good that they have no contact with their mother, no telephone contact.

I have a problem with the September 20th order. Indeed, that's the one that's most disturbing with the due-process issues. . . .

* * *

[Pg. 55]

THE COURT: All right. Let me throw out two more things, and then I am going to go around the room and try to resolve it because I have to get to some other cases here. How about a two-week - - let me throw this out: If we don't have any cases pending, then right now, I'm going to have to hear [Pg. 56] whether the September 20th order is void or not. And we're going to have to have a hearing on that procedure. And no one seems to be happy about that. Okay?

So it's seems to me there could be some period of time, such as a two-week moratorium, on visitation between counsel. You don't need the judge to say that. Learned counsel simply says, hey we have got a two-week moratorium, and then we're all going to file whatever we need to file.

* * *

[Pg. 61]

THE COURT: Let us do this: As basically a gentleman and lady's agreement, a member of the bar, which is certainly as strong as I think any court [Pg. 62] order, we have three agreements. For the next two weeks, there will be no visitation. Ms. Woods will confer with both Ms. Portnoy and Mr. Mayoue, and if Ms. Woods says there will be no contact whatsoever, Ms. Portnoy - - her client will live with that at least for two weeks; two, we talked about the appeal; three, we talked about the dismissal of any pending actions by Mr. Mayoue's client; and lastly, there will be no transactional closing.

APPENDIX P

Bryan Wilson, Jury Foreperson
State of Georgia vs. Wendy Titlemen

Dear Honorable Judge Bodiford and Mr. Pat Head:

My name is Bryan Wilson and I recently served as a juror on a trial (Apr 23-27, 2001) in the Cobb County Superior Court of Georgia. Several members of the jury have requested that I write a letter summarizing our thoughts and concerns pertaining to the case we hear' State of Georgia v. Wendy Titlemen. To understand why this case even made it to t trial was a question each of had to ask while we were deliberating on Friday. We were perplexed as to why our State would pursue such a case so diligently when there were obvious errors in the indictment and credible reports indicating sexual and emotional abuse to two small children and the prosecution of the mother who sought to protect them from harm's way.

We, the jury felt that the "State of Georgia" did in fact, neglect to protect these children and furthermore, did not have the children's best interests at heart. It appeared they wished to cover up blatant miss-steps by an agency (DFACS) that appears to have made several errors in judgment. I would like to take an opportunity to summarize these areas of concern. I sincerely hope that action can be taken to correct these situations in the future. Not only will this save the State of Georgia the expense of prosecuting such flimsy cases, but will also serve to better protect the ones who need it most, the CHILDREN of our State.

Conclusions

The "Indictment". The indictment was very poorly written and poorly executed. The dates were inconsistent with the prosecution's effort to paint the mother as a "law breaker and flight risk". Based on the information we received, the dates listed in the indictment were within the legal limits spelled out in the final divorce decree's visitation schedule. It is incredible to believe that our court system would put a decent woman in jail for doing something completely legal during the indictment's window! Very poorly written indictment in our opinion.

The charge of "Fleeing Justice". Based on the evidence presented, we, the jury, were unanimous in agreeing with and supporting Ms. Titlemen in her beliefs that there were probable cause to protect her children. The evidence gave strong indication the children were being sexually molested by their father. Ms. Hakes, the Assistant Prosecutor, in her closing statements called Ms. Titlemen a "zealot" like Timothy McVeigh for wanting to take the law into her own hands and protect her children. I believe the majority of us on the jury have children. It was also unanimous that had we felt there was reason to believe our children were being a abused or neglected , and when seeking help, found the state (who is supposed to protect our children) unwilling to review the evidence in an unbiased light, would have reacted in similar ways.

"Taking the law into her own hands". We, the jury, saw Ms. Titlemen as someone desperately trying to use the legal system in Georgia to its fullest extent to protect her children, but to no avail. Then, when discovering more evidence of abuse, was left with no choice but to apply to the State of Mississippi for help. Although Ms. Hakes painted Ms. Titlemen as a manipulator and extremist, we felt that she was justified in using whatever means

necessary to protect her children. Ms. Hakes said over and over during her cross-examinations "the State of Georgia knows best how to protect its children". We are not so sure after sitting on the jury and seeing first hand the types of "guardian" and "counselors" that the State of Georgia appoints to protect our most precious resources and future taxpayers. Dr. King admitted under oath, the children told her they were being abused. Why then do the children remain in the custody of the accused when the State does not appear to have proved otherwise?

"Does Not Deserve Justice!". We, the jury, were horrified when Ms. Hakes told us in her closing statements that Ms. Titlemen didn't deserve justice. What does that mean?! Doesn't everyone deserves justice and aren't we all innocent until proven guilty? For the Assistance Prosecutor to openly say that a citizen doesn't deserve justice is an outrage and an insult to our justice system.

Court appointed zealots. The court appointed Guardians and Counselors were not credible and did all they could not to disclose real findings or intentions. Ms. Woods defied a State of Mississippi court order (within 24 hours) to protect the children from their father until additional hearings could take place and certain evidence be reviewed. Ms. King (a supposed expert) interrogated the children for two and one-half hours without taking any notes, or tapes, etc. She then appeared to try and cover up the disclosure of sexual abuse to the court when asked in direct questioning. Therefore, we found that there were several disclosures of sexual abuse but little evidence at all of recantations. Ms. Whitaker went so far as to say the children were "abducted"! This accusation further alienated the jury by displaying such blatant bias against the mother, Ms. Titlemen.

"Paid Expert Witness". Ms. Hakes was very careful to point out numerous times that the defense had hired "expert" witnesses who were paid for their services. Where is this wrong? We all got paid for doing what we considered our civil duty. Ms. Hakes gets paid, that state appointed guardians and counselors get paid, the judge and court employees get paid, so why did she feel this was such a big deal? Ms. Hakes tried to make it a huge deal by claiming the defense had "hired guns". The State's witnesses were pathetic in our opinion. They were poorly rehearsed, poorly accredited and overtly biased. At one point, Ms. King, when asked a direct question about children confiding to her that they had been abused by their father, turns to the judge and says, "I don't want answer that, they may get made at me". Would the State really get "mad" if she told the truth under oath?

In conclusion, the jury collectively felt that was divorce of Wendy and Andy Titlemen contained deep dividing issues. It was our wish that more information could have been disclosed to assist our decision. We all agreed that the custody and well-being of these minor children should be a major concern to Cobb County. A new group of unbiased experts needs to re-evaluate this case and bring closure regarding visitation that satisfies all parties if appropriate. It has been an honor to serve as the foreperson of this jury. I feel that this jury has served justice, and that the state's mishandling of this case has cost the taxpayers of Cobb County, Georgia a lot of money.

Regards,

/s/Bryan Wilson, (bryanewilson@email.com)
Foreperson

/s/ Donna M. Kimball /s/ Kimberly J. Savransky

/s/ Ann E. Klueter /s/ Cynthia P. Winter

/s/ Vicki L. Croft

APPENDIX Q

Lynn Brentnall, PhD
June 16, 1999

* * *

Alex told me that her father rubbed her a lot and it happened when they were in bed together. She said that Andy would get in bed with her to read her a story, but that instead he would rub her, sometimes reading, sometimes not. Alex said that this would happen in the morning or at night. When I asked her where Jenny was, she told me she was not sure. Maybe she was in another room or maybe she was asleep. I asked Alex if her father rubbed her anywhere else and she told me he rubbed her face and hair. Alex told me that her father told her that this was their secret and she was not to tell. He told her several times, not to tell.

/s/ L. Brentnall

APPENDIX R

Alpha Care
1770 The Exchange/Site 150
Atlanta, Georgia 300=339
Telephone (404) 916-9034
Fax (404) 976-9030

Adrienne R. McFall, Esquire
170 Gibbons Way
Athens, Ga 30605

Dear Ms. McFall,

* * *

I spent a total of 4 sessions with either one or both of the Titleman girls. Those sessions were on 9/9/99, 9/20/99, 10/4/99 and 11/2/99. During that time I concluded that both girls were suffering from tension and anxiety related to their parents relationship, separation anxiety from the lack of contact with their mother, and feelings of guilt and helplessness which is most commonly associated with childhood trauma. Based on the circumstances that the oldest child reported to me, I believe that this trauma was due to sexual abuse. Those circumstances were as follows: the girl's father allegedly would "tickle their bottom and private parts, sometimes under clothing; allegedly he would cause them to hurt, but the oldest child would work at not crying, and would try to act as if she were "thinking about something", because "he might get mad if I cried"; when she would ask him to stop, he would "act like he didn't hear me"; the oldest girl reported that her "daddy's bottom looks like he as a dragon's tail in the front"; the youngest girl allegedly would have to take bath's with her father; and that sometimes (allegedly) their father would

dress up like a girl with a wig, dress, nail polish and make-up.

On 9/9/99, I reported allegations of abuse to the proper authorities, Dept. of Fam. And Children Services. I spoke with Anita King on that date. On 9/17/00 I wrote a letter of follow-up to Valarie McKenzie due to the fact that I did not receive any response from Ms. King or the detective working the case, Amy Hendersen, after many attempts to contact via the phone for follow-up. On 9/30/99, I received a phone call from Martin Inman following up with me on the 2nd investigation. Martin was inquisitive about how I came to know of Wendy Titleman and what my impression of her was. He seemed to have a bias in his conversation at that time. . . .

Respectfully Sumbmitted

/s/ M. Diane Pearce, Ph.D.
Psychotherapist

APPENDIX S

J. Donald Matherne, Ph.D.
Report Of Psychological Consultation Report:
Alexandra Titelman
September 2, 2000

* * *

Alexandra was questioned specifically concerning the allegation of abuse. She was questioned initially about the issue of physical abuse. She said that her father hits her and her sister on their arms with his hand. She describes her father as someone who gets "real mad. He screams and yells." She claims that this situation makes her feel bad and she is scared of her father. She is afraid of him hitting her when he gets angry. She admits that he usually does not leave a mark on her when he hits her with his hand. She was also questioned concerning the issue of sexual abuse. She was shown Figure 9 of the Anatomical Drawings published by Forensic Mental Health Associates. This depicts the front view of a grammar school female child. This procedure is consistent with the methodology used by this clinician in the investigation of alleged sexual abuse as a consultant to the Harrison County Youth Court, Jackson County Youth Court, Stone County Youth Court and Hancock County Youth Court.

Alexandra stated that her father has touched her under her clothing on her genital area, which has made her feel very uncomfortable. This usually has happened when she is in bed and "he thinks that I am asleep, but I am pretending. He comes in my room." She said this happened "when my mother was not living in the home." She said that when her father touches her in this manner, "it makes me feel like he doesn't love me." She was questioned concerning whether or not she was of the opinion that this touching was accidental or on purpose. In her opinion, he3r father

has touched her in a sexual manner on purpose. She was questioned concerning whether or not she understands the difference between the truth and a lie. She was very consistent in indicating an unde3rstanding of the difference between the truth and a lie. She is insistent that she is telling the truth. She was asked to draw a circle around the area on the anatomical drawing where she alleges that her father touched her. She circled the genital area and put an X over the opening of the vagina indicating the exact location where she alleges that her father had touched her. She was asked to write her name for the purpose of authenticity. A copy of this anatomical drawing is enclosed for further review.

This clinician used the fist demonstration to more specifically depict the alleged abuse. Alexandra was asked to close one hand and think of this as her genital area. She was then asked to take her other hand and think of this as her father's hand. She was then asked to show specifically what she remembers having happen to her. She took her left hand and rubbed it across her closed right fist. She said "he thought I was asleep." She said that she told her mother, because she wanted "my mom to help me." She was asked how she specifically felt about what had happened. She said, "I just didn't like him anymore because he did that." She was asked if she had provided this information to anyone else. She said that in her conversations with Dr. Elizabeth King, she had made mention of this, but Dr. King "didn't ask me questions about this. I mentioned it to her, but she was not interested in talking about it." She was then asked why she thought that Dr. King was not interest. Alexandra response to this question was "because she was more interested in going on to another subject immediately!"

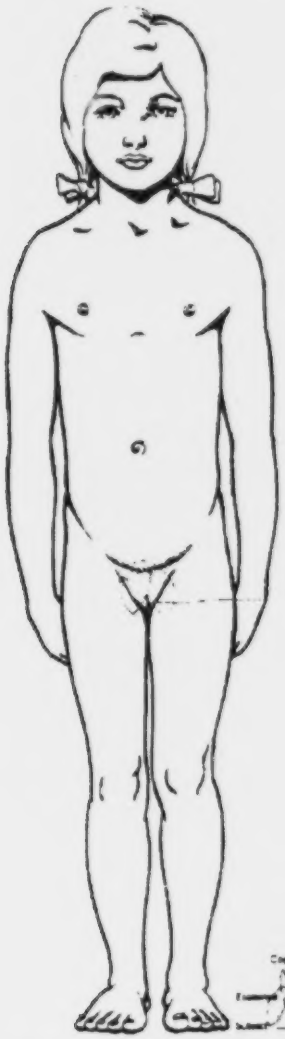
She claims that this touching of her by her father has happened a couple more times since the last school year.

She said that this has happened as recent as this summer. She said it occurred at home when she was in bed. She was specific in indicating that the room was dark, but "I knew it was him because he is really, really, really, really hairy. I peeked. He had a blue shirt on that said Amoco." She was asked if it was possible that her father had touched her in an accidental manner. She said "no because he took his hand and put it under my jammies. He rubbed me on my pee pee hole." She was asked if she thought that this would happen again. She said she is afraid that it will happen again because "if I was alone with him, probably" it would happen again. She was asked if anyone had told her to make up a lie about this situation. She stated no one had asked her to say this because "it is not made up, because what happened to me really happened."

* * *

It is this clinician's clinical opinion that Alexandra is in immediate danger of irreparable harm and/or further sexual abuse if she returns to the custody of her father at this time. It is recommended that she remain in the custody of her mother until there is an opportunity for the allegation of sexual abuse to be specifically substantiated through the court of jurisdiction. . . .

/s/ J. Donald Matherne, Ph.D.



Copyright 1984 by FORENSIC MENTAL HEALTH ASSOCIATES

9-2-00

Figure 9. White, grammar-school female child (front view)

J. Donald Matherne, Ph.D.
Report Of Psychological Consultation Report: Jennifer Titelman
September 2, 2000

* * *

In questioning Jennifer about her relationship with her parents, she noted that she relates well with her mother, but not as well with her father. She describes her father as "yelling at me and Alex. He has hit me on the arm with his hand because he gets angry." She expresses a preference to live with her mother, because her mother is nicer and does not yell at her nor does her mother hit her like her father hits her.

* * *

The child was shown Figure 9 of the Anatomical Drawings published by Forensic Mental Health Associates. This anatomical drawing depicts the front view of a grammar school female child. Jennifer stated that her father has touched her on prior occasions under her clothing on her genital area. She stated that there has never been any digital penetration or penial penetration. She also denies that there has been any history of oral sex. She indicated that when her parents were not living together this physical touching occurred when she would stay with her father. She said that her father "reached under and touched me there." She said that he would reach under her clothing and touch her on her genital area. When shown Figure 9, she pointed to the genital area in the drawing. She was asked to draw a circle around the area in question. She was also asked to put an X exactly at the location in question. She was then asked to write her name for the purpose of authenticity. A copy of this drawing is enclosed for further review. She said that this would typically happen when she had been asleep in bed. She said that when she felt herselfbeing touched "it would wake me up." She believes that her father was under the

impression that she was asleep and not aware that she could feel him touching her in this manner. Jennifer claims that she had provided this information to Dr. Elizabeth King, a psychologist on prior occasions, but Dr. King did not seem interested in this situation. The child denies that anyone had told her to make up this situation. . . .

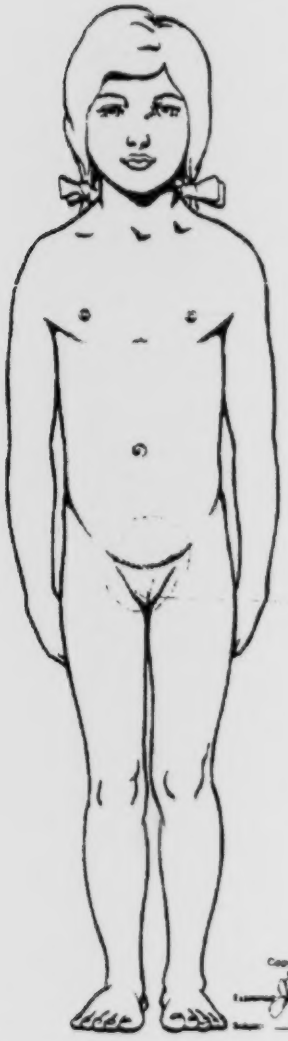
* * *

. . . It is apparent from the information obtained at this time that the child is alleging that her father did touch her in a sexual inappropriate manner on multiple occasions, typically when he did not realize that she was awake and aware of this physical contact. The child does not appear to have been prompted. The child knows the difference between the truth and a lie. The child emphatically states that she is being truthful about having been touched in this manner. She is not wanting to return to live with her father for fear of what may happen in the future. She expresses a very definite preference to remain in the care, custody and supervision of her mother. She feels safer in this environment.

Overall, this clinician is of the opinion that this child if returned to her father is in immediate danger or irreparable harm and/or further sexual abuse. This opinion is based upon the child's allegation of having been touched by her father in a sexual inappropriate manner under her clothing on her genital area. The child indicates that this has happened before her parents separation as well as since she has been living with her father. This clinician is of the opinion that the allegation of sexual abuse is substantiated.

* * *

/s/ J. Donald Matherne, Ph.D.



Copyright 1984 by FORENSIC MENTAL HEALTH ASSOCIATES

Figure 9: White, grammar-school, female child (front view)

MOTION FILED 71
OCT 9 - 2007
(3)

NO. 07-319

IN THE
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,
v.

ANDREW CHARLES TITELMAN,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE JUSTICE FOR CHILDREN, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, PARENTING PROJECT, CALIFORNIA PROTECTIVE PARENTS ASSOCIATION, COURAGEOUS KIDS NETWORK, AND VOICES OF WOMEN ORGANIZING PROJECT IN SUPPORT OF WENDY JANE TITELMAN'S PETITION FOR WRIT OF CERTIORARI

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Justice for Children (JFC), National Coalition Against Domestic Violence (NCADV), Parenting Project, California Protective Parents Association (CPPA), Courageous Kids Network (CKN), and Voices of Women Organizing Project (VOW) move this Honorable Court under Rule 37 of the Rules of the Supreme Court of the United States for leave to file a brief of amici curiae in the above-entitled cause. Because of their extensive experience dealing with issues of child abuse and custody, amici can bring to the Court's attention matters not already presented by the parties.[1]

As required by Rule 37(2), amici further state that counsel of record for all parties was notified at least 10 days prior to the due date of amici curiae's

---

[1] As required by Rule 37(6), amici states that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Amici counsel, Lynne Liberato (counsel of record) and Alene Ross Levy of Haynes and Boone, LLP, have prepared this brief without monetary contribution from Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, or any other entity, party or counsel. Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, and Haynes and Boone, LLP have no monetary interest in the outcome of this case.

intention to file this brief. Petitioner has consented to the filing. However, at the time of printing, amici had received no objection or response from respondent's counsel. Therefore amici files this motion for leave in the event that an objection is forthcoming.

1. **Justice for Children (JFC)** is a national, nonprofit child advocacy organization with headquarters in Houston, Texas and offices in Washington D.C., Michigan and Arizona. JFC was founded in 1987 by Randy Burton, a former Chief Prosecutor of the Family Offenses Section of the Harris County (Texas) District Attorney's office, and a group of concerned citizens in response to inadequacies and failures of child protective systems to protect abused and neglected children. JFC is a 501(c)(3) organization funded primarily through individual and corporate donations and foundation grants.

2. JFC's first and only priority is children, and JFC is dedicated to ensuring the meaningful and informed application of the law for their protection. To that end, JFC works to develop and implement collaborative solutions to entrenched social and legal problems impeding the quality of our children's lives.

3. JFC advocates for protection of the rights of abused and neglected children in the justice system. JFC's mission is to protect these children from

further abuse and to defend each child's right to grow up in a safe and loving environment.

4. JFC strives to raise community awareness of the alarming extent and devastating consequences of child abuse. When appropriate, JFC opposes court or agency action that threatens to compound the abuse already suffered by these helpless victims.

5. **Parenting Project**, founded in 1996 at Mathewson Street United Methodist Church, is a volunteer community service organization that assists protective parents and their children in Rhode Island Family Court custody cases. Parenting Project has documented many Parental Alienation Syndrome cases that endanger children and protective parents.

6. **National Coalition Against Domestic Violence (NCADV)** has advocated for victims of domestic violence for nearly 30 years. It is seen as the leading expert on domestic violence in the country and has joined in numerous cases related to child custody and visitation orders as an Amicus Curiae.

7. **California Protective Parents Association (CPPA)** is a non-profit organization based in Sacramento, California that advocates for the safety and parental rights of abused children and their non-offending parents in family law litigation by providing research, education, and training for the state legislature, judiciary, and general public.

CPPA has initiated national research to document the phenomenon of fit parents (predominantly mothers) losing custody to abusive parents (predominantly fathers), with findings that American family law courts are failing to provide safety for children and due process for protective parents, and are judicially retaliating against the complaining victims with custody rulings that limit or prohibit contact between children who disclose abuse and their parents who seek protection for them in family court.

8. **Courageous Kids Network** is a national organization of youth who speak out about how their lives were destroyed after family courts forcibly removed them from the custody of their safe parents and ordered them into the custody of the abusive parents, and the profound sense of loss and emotional trauma they endured as a result of having to live in fear with their abusers, while being deprived of the love and comfort of their non-offending parents. The teen founders of Courageous Kids offer support to other similarly situated youngsters and make presentations at judicial seminars, family violence conferences, and legislative trainings to educate the government and the public on the need for family court reform.

9. **Voices of Women Organizing Project (VOW)**, is the first initiative of the Battered Women's Resource Center, a nonprofit that works to empower survivors of domestic violence, so that they can influence,

change, and improve the many systems battered women and their children rely on for safety and justice.

10. The issue before this Court is of substantial legal and social magnitude. At the heart of this case is an inherent conflict between a parent's duty to protect her children, including in most states a duty to report the child's allegations of sexual abuse, and the increasingly valid fear that reporting suspected abuse will result in the mother's loss of custody of the children because of "Parental Alienation Syndrome" ("PAS").[2]

11. The need for this Court's guidance cannot be overstated. Even though some states have "protective parent" laws prohibiting the changing of custody as "punishment" for reporting abuse, the shocking practice is nevertheless widespread. And in many states, "friendly parent laws" have effectively codified PAS, in direct conflict with protective parent provisions, by directing courts to give custody to the parent who appears to encourage a good relationship between the children and the other parent.

---

[2] As amici's brief demonstrates, PAS is one man's discredited theory masquerading as a "psychological syndrome," under which abusive parents increasingly are obtaining sole custody of their victims. In many cases, including the present case, the protective parent's parental rights effectively are terminated and the children are denied all contact with that parent.

12. Cases decided under PAS and friendly parent laws are establishing a precedent that endangers the safety and health of our children nationwide because the laws silence protective parents and enable abusers. *See, e.g.*, A.C. Morrill, et al, *Child Custody and Visitation Decisions*, Vol. 11, No. 8, VIOLENCE AGAINST WOMEN 1076-1107 (2005). In addition, these laws completely ignore the best interest of the children, which, under all legal standards, should be paramount in custody decisions.

13. Through their experience and long standing commitment to children who may be forever scarred by abuse and neglect, amici have developed an expertise that can serve as a valuable resource for the Court as it considers the issues raised by this case.

14. In addition, Justice for Children's expert opinion is recognized and valued by local and national media, legal and medical professionals, child abuse experts, and other children's rights organizations.[3] Justice for Children has appeared as

---

[3] For example, JFC has appeared on numerous national television shows, including ABC's Primetime Live, ABC's prime-time documentary entitled "Crimes Against Children," a PBS documentary entitled "Boy Crying, Baby Crying," as well as Good Morning America, Donahue, the Discovery Channel's "Justice Files," and HBO.

amicus curiae in numerous state courts throughout the country.[4]

Accordingly, Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project respectfully request that this Honorable Court grant this motion for leave and order that the Brief of Amici Curiae Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project in Support of Wendy Jane Titelman's Petition for Writ of Certiorari be filed among the papers in this cause.

Respectfully submitted,

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600
* *Counsel of Record for Amici Curiae*

Dated: October 9, 2007.

---

[4] *See, e.g., In the Interest of R.B.*, 186 S.W.3d 255 (Mo. 2006); *Wilkins v. Ferguson*, 928 A.2d 655 (D.C. 2007); *Fox v. Mina*, No. 2006-CA-002521-ME, 2007 WL 2745375 (Ky. Ct. App. Sept. 21, 2007).

NO. 07-319

IN THE
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,

v.

ANDREW CHARLES TITELMAN,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

AMICI CURIAE BRIEF OF JUSTICE FOR CHILDREN, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, PARENTING PROJECT , CALIFORNIA PROTECTIVE PARENTS ASSOCIATION, COURAGEOUS KIDS NETWORK, AND VOICES OF WOMEN ORGANIZING PROJECT IN SUPPORT OF WENDY JANE TITELMAN'S PETITION FOR WRIT OF CERTIORARI

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

QUESTION PRESENTED 5

INTRODUCTION 6

SUMMARY OF THE ARGUMENT 7

STATEMENT OF THE CASE 8

ARGUMENT 8

I. The due process violations in the case before this Court are being repeated in child abuse cases throughout this country 8

II. "Parental Alienation Syndrome" is the worst kind of junk science 18

III. "Parental Alienation Syndrome" does not satisfy the burden of proof for termination of parental rights in any state 23

A. PAS violates a woman's constitutional right to equal protection under the law 27

B. PAS endangers children.....30

C. Gardner's pro-pedophilia writings further reveal the bias of PAS 32

CONCLUSION AND PRAYER.....36

TABLE OF AUTHORITIES

CASES

In re A.L.E.,
546 S.E.2d 319 (2001) 27

In re A.R.,
-- S.E.2d --, 2007 WL 2386592
(Ga. App. Aug. 22, 2007) 10

Couch v. Couch,
978 S.W.2d 505 (Mo. App. 1998) 15

In re Custody of Zia,
736 N.E.2d 449 (Mass. App. Ct. 2000) 14, 15

Daubert v. Merrell Dow Pharm., Inc.,
113 S. Ct. 2786 (1993) 22

Dobson v. Harris,
530 S.E.2d 829 (N.C. 2000) 10

Frye v. United States,
293 F. 1013 (D.C. Cir. 1923) 22

Hamilton v. Hamilton,
886 S.W.2d 711 (Mo. App. 1994) 15

Interest of J.V.,
526 S.E.2d 386 (Ga. 1999) 10

Kent v. Green,
701 So. 2d 4 (Ala. Civ. App. 1996).....15

O'Heron v. Blaney,
583 S.E.2d 834, 836 (Ga. 2003).....10

People v. Fortin,
706 N.Y.S.2d 611 (Crim. Ct. 2000).....22

Simmons v. Simmons,
649 So. 2d 799 (La. App. Ct. 1995).....15

State v. Lindsey,
720 P.2d 73 (Ariz. 1986).....11

In re T.L.H.,
523 S.E.2d 50 (1999).....28

STATUTES

OCGA § 15-11-94.....27

SECONDARY SOURCES

Allison C. Morrill, et al., *Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother*, Vol. 11, No. 8, VIOLENCE AGAINST WOMEN 1076-1107 (2005).....2

Peter G. Jaffe, et al., CHILDREN OF BATTERED WOMEN (Sage, 1990).....2

Peter G. Jaffe, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, Vol. 54, No. 4, JUV. AND FAMILY COURT J., 57-67 (2003) 9

Janet R. Johnston and Linda E. Campbell, IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT (The Free Press, 1999) 9

Susan M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parents*, Vol. 20, No. 7 CHILD ABUSE & NEGLECT: THE INT'L JOURNAL 589-98 (1996) 9

Richard A. Gardner, *The Judiciary's Role in the Etiology, Symptom Development, and Treatment of the Parental Alienation Syndrome* (PAS), 21(1) AM. J. FORENSIC PSY. 39-64 (2003) 11

Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, ARIZONA COALITION AGAINST DOMESTIC VIOLENCE at 23 (2003) 11

THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (Bancroft & Silverman 2002) 11, 20, 28, 30

Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (APA 1996) 11

Domestic Violence & the Courtroom Understanding the Problem . . . Knowing the Victim (American Judges Found.) 11, 17

S. Dallam, *Are "Good Enough" Parents Losing Custody to Abusive Ex-Partners?* (Leadership Council on Child Abuse & Interpersonal Violence 2006) 12, 13

S. Dallam, & J.L. Silberg, *Myths that Place Children at Risk During Custody Disputes,* SEXUAL ASSAULT REPORT 9(3), 33-47 (Jan/Feb 2006) 13

Faller and DeVoe, *Allegations of Sexual Abuse in Divorce*, Vol. 4, No. 4 JOURNAL OF CHILD SEXUAL ABUSE (1995) 13

G.B. Stahly, et al, *Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse* (California State Univ. 2004) 14, 15

Disorder in the Courts: Mothers and Their Allies Take on the Family Law System (a collection of essays) 14

Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, Vol. 11, No. 2 GENDER, SOCIAL POL'Y & THE LAW 657-731 & n.19 (2003) 15

Neustein & Goetting, *Judicial Responses to the Protective Parent's Complaints of Child Sexual Abuse*, Vol. 8, No. 4 JOURNAL OF CHILD SEXUAL ABUSE 103-122 (1999) 16

Phyllis Chesler, MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY (McGraw-Hill 1986) 16

ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS, Final Report, Judicial Council of California Advisory Committee on Gender Bias in the Courts (Gay Danforth & Bobbie Welling eds., 1996) 16, 17, 29

ARIZONA COALITION AGAINST DOMESTIC VIOLENCE, BATTERED MOTHERS' TESTIMONY PROJECT: A HUMAN RIGHTS APPROACH TO CHILD CUSTODY AND DOMESTIC VIOLENCE at 6-7 (2003) 17

Richard A. Gardner, *Recent Trends in Divorce and Custody Litigation*, Vol. 29, No. 2 ACADEMY FORUM (Summer 1985) 18

Cheri L. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, 27 LOY. L.A. LAW REV. 1367 (1994) 19

Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?* AM. J. FAM. THERAPY (2002) 19

Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR MENTAL HEALTH AND LEGAL PROFESSIONALS at 59 (1998) 19

REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY at 12 n.2 (APA 1996) 20, 21

Thoennes & Tjaden, *The Extent, Nature and Validity of Sexual Abuse Allegations in Custody and Visitation Disputes*, Vol. 14, No. 2 CHILD SEXUAL ABUSE & NEGLECT at 151-63 (1990) 21

Brown, Frederico, Hewitt & Sheehan, *Revealing the Existence of Child Abuse in the Context of Marital Breakdown and Custody and Access Disputes*, Vol. 24, No. 6 CHILD ABUSE & NEGLECT 849-859 (2000) 21

Bala & Schuman, *Allegations of Sexual Abuse When Parents Have Separated*, 17 CAN. FAM. L. Q. 191-241 (2000) 21

American Psychological Association, STATEMENT ON PARENTAL ALIENATION SYNDROME (APA 2005) 22

American Psychiatric Association, CONTROVERSIAL SYNDROME ARISES IN CHILD-CUSTODY BATTLES (APA 2000) 22

John Myers, *Expert Testimony Describing Psychological Syndromes*, 24 PAC. L. REV. 1449 (1993) 22

Jamie Talan, *The Debate Rages On . . . n Death, Can He Survive?* Newsday.com, July 1, 2003 23

Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR MENTAL HEALTH AND LEGAL PROFESSIONALS, at 61-62 (Creative Therapeutics 1992) 27, 28

Merrilyn McDonald, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, COURT REVIEW at 12-19 (Spring 1998) 28

Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and their Children in the Family Court System*, 37 FAM. & CONCILIATION COURTS REV. 273-96 (1999) 28

L.M. Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J. L. & FEMINISM 359-407 (1996) 29

THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK, ABA Commission on Domestic Violence.....29

P. Susan Penfold, *Questionable Beliefs About Child Sexual Abuse Allegations During Custody Disputes*, 14 CAN. J. FAM. L. 11-30 (1997) 30

A.C. Morrill, et al, *Child Custody and Visitation Decisions*, Vol. 11, No. 8 VIOLENCE AGAINST WOMEN 1076-1107 (2005).....30

Christine Lehmann, *Controversial Syndrome Arises in Child-Custody Battles*, PSYCHIATRIC NEWS (September 1, 2000).....32

INTEREST OF AMICI CURIAE

Justice for Children ("JFC") is a 501(c)(3) organization whose first and only priority is protecting children from abuse and neglect, particularly when the abuse is caused or compounded by the very court system that is supposed to protect the child. JFC is interested in this particular case for several reasons. JFC has invested thousands of hours in this and countless other cases with virtually identical circumstances and similarly tragic outcomes. As a national child protective organization, JFC is contacted daily by mothers all over the country who are living Wendy Titelman's nightmare. And in each of those cases, at least one helpless child is being victimized by an abusive parent and terrorized by a court that has delivered the victim into the hands of the abuser and cut him or her off from the only protector he or she has ever known.

JFC knows, first-hand, how vulnerable these frightened children are and how devastating their experiences are to their social, psychological and physical development. JFC also sees the burden our society must bear when these abused, neglected and ultimately betrayed children mature into adults with myriad social and psychological problems.[1]

---

[1] Adverse effects on children of domestic violence, including sexual abuse, include serious emotional,

JFC is committed to doing all it can to develop a substantial body of law that will put an end to this injustice and assure the protection of these helpless victims. This Court's unequivocal condemnation of the due process and equal protection violations that occurred in Wendy Titelman's case and are being repeated in cases throughout this country would go a long way toward facilitating that goal.

Parenting Project, founded in 1996 at Mathewson Street United Methodist Church, is a volunteer community service organization that assists protective parents and their children in Rhode Island Family Court custody cases. parenting Project has documented many Parental Alienation Syndrome cases that endanger children and protective parents.

The National Coalition Against Domestic Violence (NCADV) has advocated for victims of domestic violence for nearly 30 years. It is seen as the leading expert on domestic violence in the country and has joined in numerous cases as an

---

behavioral and health problems such as aggressive behavior, depression, IV drug use, alcoholism and cognitive deficiencies. Allison C. Morrill, et al., *Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother*, Vol. 11, No. 8, VIOLENCE AGAINST WOMEN 1076-1107 (2005); Peter G. Jaffe, et al., CHILDREN OF BATTERED WOMEN (Sage, 1990).

Amicus Curiae related to child custody and visitation orders.

California Protective Parents Association (CPPA) is a non-profit organization based in Sacramento, California that advocates for the safety and parental rights of abused children and their non-offending parents in family law litigation by providing research, education, and training for the state legislature, judiciary, and general public. CPPA has initiated national research to document the phenomenon of fit parents (predominantly mothers) losing custody to abusive parents (predominantly fathers), with findings that American family law courts are failing to provide safety for children and due process for protective parents, and are judicially retaliating against the complaining victims with custody rulings that limit or prohibit contact between children who disclose abuse and their parents who seek protection for them in family court.

Courageous Kids Network is a national organization of youth who speak out about how their lives were destroyed after family courts forcibly removed them from the custody of their safe parents and ordered them into the custody of the abusive parents, and the profound sense of loss and emotional trauma they endured as a result of having to live in fear with their abusers, while being deprived of the love and comfort of

their non-offending parents. The teen founders of Courageous Kids offer support to other similarly situated youngsters and make presentations at judicial seminars, family violence conferences, and legislative trainings to educate the government and the public on the need for family court reform.

Voices of Women Organizing Project (VOW) is the first initiative of the Battered Women's Resource Center, a nonprofit that works to empower survivors of domestic violence, so that they can influence, change, and improve the many systems battered women and their children rely on for safety and justice.

QUESTION PRESENTED

Should this Court grant certiorari to address the *de facto* termination of a mother's parental rights without due process of law and in violation of equal protection considering that the Georgia courts' violations are being repeated in hundreds – perhaps even thousands – of nearly identical cases all across this country?

INTRODUCTION

Justice for Children, a national child advocacy organization, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project, file this amici curiae brief in support of Wendy Jane Titelman's petition for writ of certiorari. Amici respectfully urge the Court to grant the petition to address a national tragedy of staggering proportions.[2]

---

[2] As required by Rule 37(6), amici states that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Amici's pro bono counsel, Lynne Liberato (counsel of record) and Alene Ross Levy of Haynes and Boone, LLP, have prepared this brief without monetary contribution from Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, or any other entity, party or counsel. Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, and Haynes and Boone, LLP have no monetary interest in the outcome of this case. As required by Rule 37(2), amici further state that counsel of record for all parties received notice at least 10 days prior to the due date of the amici curiae's intention to file this brief.

SUMMARY OF THE ARGUMENT

An epidemic is raging throughout America's courts. A bogus "psychiatric disorder" called "Parental Alienation Syndrome" is being used in courts all across this country to give abusive parents custody of their young victims. In a shocking number of these cases, the abused children are also being abruptly, and often completely, cut off from any contact with the parent who had been their protector, thus suffering further abuse at the behest of the courts. And, incredibly, these life-altering (and sometimes life-threatening) changes are being wrought without so much as a nod to the protective parent's or the child's most fundamental due process and equal protection rights.

Imagine the terror these children endure when they are delivered into the custody and control of the abuser they have courageously reported. And imagine the overwhelming confusion and crushing despair that follows when, day after day, their protector does not come to rescue them.

How can anyone, much less a young, vulnerable child, make sense of this scenario? Lay people recoil in disbelief when they hear the details of these cases. And disbelief turns to disgust when they learn that the basis for such

court rulings is "Parental Alienation Syndrome" ("PAS"), a bogus, gender-biased theory that is not recognized by any medical or psychiatric authority, has been held inadmissible by many courts, and is the "brain child" of a charlatan who, during his lifetime, openly endorsed sexual contact between adults and children.

This case presents this Honorable Court with an opportunity to save thousands of such children from this victimization.

STATEMENT OF THE CASE

Amici adopt the Petitioner's statement of the case.

ARGUMENT

I. The due process violations in the case before this Court are being repeated in child abuse cases throughout this country.

In record numbers of cases, the parental rights of protective parents like Wendy Titelman are effectively being terminated in violation of the parents' due process and equal protection rights. But there are no pleadings, proof or findings of unfitness to satisfy the legal requirements for the drastic sanction of termination. Moreover, none of these rulings is based on the best interest of the children, the legal gold standard for custody decisions.

Rather, the basis for these rulings is a discredited "condition" called "Parental Alienation Syndrome."

In all of these cases, the procedural "drill" is the same. Couples are separated, divorcing or have recently divorced when their children disclose physical or sexual abuse by their father. Domestic violence is a component in the vast majority of these cases where custody is disputed. Peter G. Jaffe, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, Vol. 54, No. 4, JUV. AND FAMILY COURT J., 57-67 (2003) (finding domestic violence was an issue in 75% of cases in one sample in which parents were referred for custody evaluations); Janet R. Johnston and Linda E. Campbell, IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT (The Free Press, 1999) (finding domestic violence was a factor in 70%-75% of the marriages of parents referred by family court to counseling because of ongoing conflict over their children).[3]

---

[3] Studies of domestic violence cases where custody is not an issue show that a high percentage of those cases involve child abuse as well. In fact, studies have shown that "intimate partner violence" is a strong predictor of child abuse with the risk increasing from 5% after one act of such violence to 100% after 50 acts. Susan M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parents*, Vol. 20, No. 7 CHILD ABUSE & NEGLECT: THE INT'L JOURNAL 589-98 (1996). Simply put, fathers who commit domestic violence are highly likely to abuse their children.

Sometimes the abuse is disclosed to the mother, but often the confidant is another adult – a teacher, family member, school nurse, doctor or therapist who is seeing the child for problems that may or may not be related to the breakdown of the marriage. In every state, these individuals are "mandated reporters" of suspected child abuse. *See, e.g., Dobson v. Harris*, 530 S.E.2d 829, 833 (N.C. 2000) "[A]ll fifty states have codified mandatory reporting statutes that impose a duty to report suspected or observed child abuse ...."). Georgia is no exception. *See O'Heron v. Blaney*, 583 S.E.2d 834, 836 (Ga. 2003). And while some states do not include parents in their reporting statutes, a mother who fails to report a child's outcry of abuse risks being found unfit and losing custody of her children. *See, e.g., In re A.R.*, -- S.E.2d --, 2007 WL 2386592 (Ga. App. Aug. 22, 2007) (citing *In the Interest of J.V.*, 526 S.E.2d 386 (Ga. 1999).

Through one source or the other, the family court is informed of the child's allegations and protections are sought pending an investigation. But the expected protection never materializes. Instead, the protective mother suddenly finds herself "the accused" under a bogus theory called "Parental Alienation Syndrome," the unsupported premise of which is that virtually all allegations of sexual abuse that arise in divorce and custody cases are "programmed" by a

vindictive mother who is trying to "alienate" her children from the father. Fathers who assert PAS typically present "experts" like Richard Gardner, the founder of PAS, whose testimony effectively tells the judge or jury that the mother and child are lying.[4]

The father also argues and his expert testifies, in keeping with Gardner's theory, that the only way to counteract the "alienation" is to award full custody to the alleged abuser. Richard A. Gardner, *The Judiciary's Role in the Etiology, Symptom Development, and Treatment of the Parental Alienation Syndrome* (PAS), 21(1) AM. J. FORENSIC PSY. 39-64 (2003).[5]

---

[4] As Jill Zuccardy points out, such testimony invades the province of the fact-finder and should not be admitted. *See Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence*, ARIZONA COALITION AGAINST DOMESTIC VIOLENCE at 23 (2003), citing *State v. Lindsey*, 720 P.2d 73, 74 (Ariz. 1986).

[5] Abusive fathers are more likely to seek custody than non-violent ones. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 5, p. 156 (Bancroft & Silverman 2002). The American Psychological Association found that fathers who batter mothers are twice as likely as nonviolent fathers to seek custody of their children. *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (APA 1996). And they are successful about 70% of the time. *Domestic Violence & the Courtroom Understanding the Problem . . . Knowing the Victim* (American Judges Found.).

had custody at the time of separation. However, because they reported child abuse, 45% of the mothers were accused of PAS, and only 27% still had custody after the court proceedings. Most of those who lost custody had no notice of the hearing and the *ex parte* hearing was not reported. Ninety-seven percent said that court personnel threatened to punish them for their efforts to protect their children and 65% were threatened with sanctions for talking publicly about their case. The average cost of the cases was more than $80,000, which caused over 25% of the mothers to file bankruptcy. Although 87% believed their children still were being abused, they had stopped reporting abuse out of fear that all contact with their children would be terminated. Eleven percent of the children had attempted suicide. G.B. Stahly, et al, *Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse* (California State University 2004); *Disorder in the Courts: Mothers and Their Allies Take on the Family Law System* (a collection of essays), electronic download *available at* http://store.canow.org/products.php?prod_id=3.

In a 2001 study of 38 state appellate court cases that involved custody and domestic violence, 36 of the 38 trial courts had awarded joint or sole custody to alleged *and adjudicated* batterers. *See, e.g., In re*

Custody of Zia, 736 N.E.2d 449 (Mass. App. Ct. 2000) (custody awarded to father who had been repeatedly convicted of domestic assault); *Kent v. Green*, 701 So. 2d 4 (Ala. Civ. App. 1996) (father given sole custody of 16-month old baby despite his violent assault on and subsequent arrest for injury to the mother that required her hospitalization); *Couch v. Couch*, 978 S.W.2d 505 (Mo. App. 1998) (father given custody after he broke the mother's collarbone); *Simmons v. Simmons*, 649 So. 2d 799, 802 (La. App. Ct. 1995) (father given custody after violent acts); *Hamilton v. Hamilton*, 886 S.W.2d 711, 715 (Mo. App. 1994) (father given custody after admitting that he committed two assaults). Two-thirds of these decisions were reversed on appeal. However, one of the reversals was a case – one of the only two – that had favored the mother. Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, Vol. 11, No. 2 GENDER, SOCIAL POL'Y & THE LAW 657-731 & n.19 (2003).

A study of 300 custody cases that examined judicial reaction to protective parents' complaints of child sexual abuse found that primary custody was given to the protective parent and supervised contact was ordered for the abuser in only 10% of the cases. In

20% of the cases, the child was placed in the primary legal and physical custody of the allegedly sexual abusive parent (the father) and the mother completely lost custody. In the rest of the cases (70%), the courts ordered joint custody with no provision for supervision of the child's time with the alleged abuser. Neustein & Goetting, *Judicial Responses to the Protective Parent's Complaints of Child Sexual Abuse*, Vol. 8, No. 4 JOURNAL OF CHILD SEXUAL ABUSE 103-122 (1999).

In a study of 60 custody disputes, fathers who contested custody won sole custody in 82% of the cases even though 59% had abused their wives. Only 13% of the fathers had been involved in child care activities before the divorce. *See* Phyllis Chesler, MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY (McGraw-Hill 1986).

A study on gender bias in the California courts found that negative stereotypes about women encourage courts to doubt their allegations of child sexual abuse. "One striking example is the tendency to doubt the credibility of women who make these allegations, characterizing them as hysterical or vindictive — even when medical evidence corroborates a claim of child abuse." ACHIEVING EQUAL JUSTICE FOR WOMEN AND

MEN IN THE CALIFORNIA COURTS, Final Report, Judicial Council of California Advisory Committee on Gender Bias in the Courts 150 (Gay Danforth & Bobbie Welling eds., 1996).

A study by the Arizona Coalition Against Domestic Violence found that courts awarded joint or sole custody to alleged batterers 56-74% of the time. Many of the cases involved documented child or spousal abuse. ARIZONA COALITION AGAINST DOMESTIC VIOLENCE, BATTERED MOTHERS' TESTIMONY PROJECT: A HUMAN RIGHTS APPROACH TO CHILD CUSTODY AND DOMESTIC VIOLENCE at 6-7 (2003).

The American Judges' Foundation found that fathers often are awarded sole custody even when there is substantiated abuse of their children. "Abusers convince the court to give them custody 70% of the time." *Domestic Violence & the Courtroom: Understanding the Problem . . . Knowing the Victim, available at* http://aja.ncsc.dni.us/domviol/booklet.html.

As these statistics suggest, the safety and security of our country's most vulnerable citizens is being compromised over and over again through the same flawed legal processes that have affected the Titelman children. This Court's action is clearly warranted and

desperately needed if the current trend is to be reversed.

II. "Parental Alienation Syndrome" is the worst kind of junk science.

"Parental Alienation Syndrome" (PAS) is the creation of one man, Richard Gardner, M.D., an unpaid part-time clinical professor of child psychiatry on Columbia University's volunteer faculty, whose primary source of income was his appearance as an expert witness for fathers in custody cases. Gardner first described the so-called syndrome, based purely on anecdotal evidence gathered from his own practice, more than 20 years ago. *See* Richard A. Gardner, *Recent Trends in Divorce and Custody Litigation*, Vol. 29, No. 2 ACADEMY FORUM (Summer 1985).

More recently, Gardner stated the definition thusly:

> The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child–custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own

> contributions to the vilification of the target parent.

Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?* AM. J. FAM. THERAPY (2002).[8]

As his definition suggests, Gardner, who committed suicide in 2003, believed that the vast majority of sexual abuse allegations in divorce and custody cases are false, and he defined his "syndrome" as a defense to those allegations. That is the logical fallacy in Gardner's theory: PAS assumes (falsity) what it seeks to prove (falsity).

There is no valid basis for Gardner's premise that almost all claims of abuse in the context of custody litigation are false. Gardner justified his

---

[8] All of Gardner's writings are self-published, most through his own company, Creative Therapeutics, and a few in non-peer reviewed publications. While his publications in legal periodicals may seem weighty, they are not peer-reviewed by psychiatrists or psychologists, a threshold qualification for acceptance in any scientific community. *See* Cheri L. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, 27 LOY. L.A. LAW REV. 1367 (1994). Although Gardner's "research" was limited solely to observations in his own practice, he maintained that PAS is a rampant problem, occurring in at least 90% of his caseload. Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR MENTAL HEALTH AND LEGAL PROFESSIONALS at 59 (1998).

assumption simply because allegations of abuse frequently arise for the first time during a divorce. However, there are many credible reasons why a child might not reveal abuse until the parents are divorcing. For example, the child may not have felt safe revealing the abuse while the abuser was still living in the home but after separation may feel more secure. On the other hand, a child who is spending more time alone with the abuser after separation may seek protection because he/she is feeling more threatened. In some cases, the child may have feared that his or her disclosure would not be believed, but that fear abates after the parents separate. In other cases, the abuse does not begin until after the parents have separated.[9]

In short, the timing of a child's revelation of abuse has no bearing on its merit. Research repeatedly has confirmed that there is not a higher incidence of false allegations of abuse in the context of custody disputes. The American Psychological Association found that "false reporting of family violence occurs infrequently" and does not increase during divorce or custody cases. REPORT OF THE AMERICAN PSYCHOLOGICAL

---

[9] A batterer's motivation to intimidate and control his spouse through the children often increases after separation, due to loss of other methods of control. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 2, p. 44 (Bancroft & Silverman 2002).

ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY at 12 n.2 (APA 1996). *See also* Thoennes & Tjaden, *The Extent, Nature and Validity of Sexual Abuse Allegations in Custody and Visitation Disputes*, Vol. 14, No. 2 CHILD SEXUAL ABUSE & NEGLECT at 151-63 (1990) (finding that child sexual abuse allegations in custody cases are rare – about 6% – and the majority of such allegations – 66% – are substantiated).[10]

In fact, false allegations are no more common in divorce or custody disputes than at any other time. *See* Brown, Frederico, Hewitt & Sheehan, *Revealing the Existence of Child Abuse in the Context of Marital Breakdown and Custody and Access Disputes*, Vol. 24, No. 6 CHILD ABUSE & NEGLECT 849-859 (2000). And when false accusations intentionally are made, fathers have been found far more likely than mothers to have made them (21% compared to 1.3%). Bala & Schuman, *Allegations of Sexual Abuse When Parents Have Separated*, 17 CAN. FAM. L. Q. 191-241 (2000). Still, thanks to PAS, officers of the court tend to be unreasonably suspicious when mothers report abuse of their children.

As these statistics reveal, PAS is dangerous junk science. Accordingly, it has been widely

---

[10] The remaining allegations are not necessarily disproved. They simply may not have been established with certainty.

rejected by mental health researchers and experts alike. *See* American Psychological Association, STATEMENT ON PARENTAL ALIENATION SYNDROME (APA 2005) ("An APA 1996 Presidential Task Force on Violence and the Family noted the lack of data to support so-called 'parental alienation syndrome' and raised concern about the term's use."); American Psychiatric Association, CONTROVERSIAL SYNDROME ARISES IN CHILD-CUSTODY BATTLES (APA 2000) (noting that PAS is not included in the DSM-IV and is not generally accepted in the scientific community); John Myers, *Expert Testimony Describing Psychological Syndromes*, 24 PAC. L. REV. 1449, 1455 n.21, 1462 (1993) (PAS is not a diagnostic tool; it "provides no insight" and should not be admissible to prove causation). *See Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923); *Daubert v. Merrell Dow Pharm., Inc.*, 113 S. Ct. 2786, 2792-93 (1993); *see also People v. Fortin*, 706 N.Y.S.2d 611, 612 (Crim. Ct. 2000). Dr. Gardner offered to testify on behalf of Fortin, the accused in a criminal sex abuse case, concerning PAS and the credibility of the complainant. The court refused to admit his testimony because it was not shown that PAS is generally accepted within the professional community.)[11]

---

[11] PAS is not recognized as a "syndrome" by the medical/psychiatric community. In the late 1980s, when psychiatrists were revising the profession's Diagnostic and Statistical Manual (DSM), Dr. Robert Spitzer, professor of

III. "Parental Alienation Syndrome" does not satisfy the burden of proof for termination of parental rights in any state.

PAS does not satisfy the burden of proof under Georgia's or any other state's law upon which a court can take the drastic step of terminating parental rights. As summarized below, under the law that was in effect at the time Wendy Titelman's contact with her

---

psychiatry at Columbia University College of Physicians and Surgeons was leading the effort. Gardner, who had an unpaid clinical appointment on Columbia's voluntary faculty, reportedly asked if Parental Alienation Syndrome would be included. Spitzer said "It would never be taken seriously . . . It isn't a mental disorder." Similarly, Harvard's Dr. Eli Newberger, an assistant professor of pediatrics and an expert on child abuse said he's been called on by state child protection agencies to evaluate ambiguous disclosures of abuse in divorce cases, and believes that PAS deflects any real investigation into such allegations. According to Newberger, Gardner's theory is at the center of the controversy. "This is an atrocious theory with no science to back it up . . . This so-called diagnosis has been used to steer clear of children's needs. . . . The court's acceptance of the diagnosis without the psychiatric profession's endorsement is 'dangerous,'" Newberger stressed. Still, PAS has endured, perhaps, said psychiatrist Joyanna Silberg, because it is rare in family courts for lawyers or judges "to question the expert testimony of a psychiatrist with a long list of seemingly impressive credentials and dozens of professional-looking books and journal articles." Jamie Talan, *The Debate Rages On . . . In Death, Can He Survive?* Newsday.com, July 1, 2003, *available at* http://www.leadershipcouncil.org/1/pas/talan.html.

daughters was abruptly severed, termination required proof of the following:

> (a) ...the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this code section. If there is clear and convincing evidence of parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child ...
>
> (b) ... the court by Order may terminate the parental rights of a parent ... if:
>
> (1) the written consent of the parent ... has been given ...;
>
> (2) ... the parent ... has wantonly and willfully failed to comply with [a support order] for a period of 12 months or longer;
>
> (3) the parent has abandoned the child ...;
>
> (4)(A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as defined in § 15-11-2;

(ii) The lack of proper parental care or control ... is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied;

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the ... child;

(ii) excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances ... rendering the parent incapable of providing adequately for ... the child;

(iii) Conviction of the parent of a felony and imprisonment therefore which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental or emotional neglect of the child ... or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death

> resulted from parental neglect or abuse....
>
> (5) The parent has been convicted of the murder of the child's other parent.

OCGA § 15-11-94; *see also In re A.L.E.*, 546 S.E.2d 319, 323 (2001) (statutory criteria for termination of parental rights are the two-step procedure provided in OCGA § 15-11-94, formerly codified at OCGA § 15-11-81(a)); *In re T.L.H.*, 523 S.E.2d 50, 51 (1999) (court must first determine whether clear and convincing evidence exists of parental misconduct or inability under § 15-11-81(a), and, if it does, then decide whether termination is in the best interest of the children).

The trial court summarily abandoned this exacting standard in favor of PAS. There was no pleading, proof or findings on any of the factors that would support termination in Wendy Titelman's case.

A. PAS violates a woman's constitutional right to equal protection under the law.

PAS is inherently gender biased. First, according to Gardner, PAS is almost exclusively a female problem. Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR

MENTAL HEALTH AND LEGAL PROFESSIONALS, at 61-62 (Creative Therapeutics 1992). PAS is almost always raised by fathers who seek custody in cases where there is a history of domestic violence and/or child abuse. They seek custody to maintain or extend their control and authority over their victims (spouse and/or children) after separation.

Because of these circumstances, women accused of PAS are at a significant disadvantage in court. Most women accused of PAS are victims of domestic violence, and, because of that trauma, they may seem hostile, incoherent and agitated. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 5, p. 118 (Bancroft & Silverman 2002). Because the woman appears anxious, stressed and upset, she may be portrayed as unbalanced and obsessive. Merrilyn McDonald, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, COURT REVIEW at 12-19 (Spring 1998). In addition, the woman may be reluctant to disclose the violence because of embarrassment or the pain of retelling her experiences. Resulting inconsistencies or gaps in her story may raise suspicion that she is fabricating. Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and their Children in the Family Court System*, 37 FAM. & CONCILIATION COURTS REV. 273-96 (1999). These women's behavior, reasonable as a response to

and protection against the violence they have suffered, may be misinterpreted as a sign of instability.

PAS also promotes and capitalizes on negative stereotypes of women, further encouraging judges to disbelieve their allegations of child sexual abuse. ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS, Final Report, Judicial Council of California Advisory Committee on Gender Bias in the Courts (Gay Danforth & Bobbie Welling eds., 1996) (such stereotypes include seeing women as hysterical, exaggerating, obsessive, vindictive).

In contrast, "many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent." THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK, ABA Commission on Domestic Violence. They are often charming and well versed in manipulation tactics, and they can make excellent witnesses who testify in a calm and poised manner. L.M. Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J. L. & FEMINISM 359-407 (1996). In many cases they "pathologize" their ex-wives while presenting

themselves as the rational, reasonable and logical parent. P. Susan Penfold, *Questionable Beliefs About Child Sexual Abuse Allegations During Custody Disputes*, 14 CAN. J. FAM. L. 11-30 (1997).

The abusive partner has other advantages in custody litigation. He typically can afford good legal representation; he performs better than his traumatized victim in psychological testing; he is better able to manipulate custody evaluators to garner their sympathy; and he has the power to intimidate the children regarding their statements to the evaluator and others. Bancroft & Silverman, *supra*.

B. PAS endangers children.

Cases decided under PAS are establishing a precedent that endanger the safety and health of our children nationwide. PAS presents a protective parent with a dilemma that no parent should ever have to face: a choice between protecting her children and the increasingly valid fear that reporting suspected abuse will result in a loss of custody. Because of this fear, PAS is silencing protective parents and enabling abusers. *See, e.g.*, A.C. Morrill, et al, *Child Custody and Visitation Decisions*, Vol. 11, No. 8 VIOLENCE AGAINST WOMEN 1076-1107 (2005). To make matters worse, PAS violates virtually all custody statutes by impermissibly subordinating

the best interests of the children to punishment of the protective parent.

The ultimate danger of PAS is that it allows – even encourages – a court and/or a jury to completely disregard a child's outcry of abuse at the hands of one parent by attributing those allegations solely to "alienation" by the other parent. The tables are turned; the protective parent becomes the "villain;" and the child is forgotten. In many cases, the child's claims of abuse are never investigated. In other cases, clear and convincing evidence of the abuse, including doctors', therapists' and court evaluators' conclusions of validity, is excluded or ignored. The court's focus is trained exclusively on the protective parent's allegedly "alienating" conduct.

Paul Fink, M.D., a past president of the APA and the Leadership Council on Mental Health, Justice and the Media, summed up the situation: "I am very concerned about the influence Gardner and his pseudo-science are having on the courts in cases involving alleged child sexual abuse. Once the judge accepts PAS, it is easy to conclude that the abuse allegations are false, and the courts award custody to alleged or proven perpetrators. . . .We don't know if the allegations are true or not, but this is a matter for the courts to decide. When Gardner proclaims that PAS is a syndrome. . . he

undermines the seriousness of sexual abuse allegations."[12]

Nevertheless, PAS repeatedly is used, successfully, to divert attention from domestic violence and child abuse, and its popularity continues to grow. It provides an explanation for conduct that most people prefer to believe does not exist. By offering a reason for the child's fear or anger, PAS allows the court to avoid the highly charged issue of child sexual abuse. The loser is the forgotten child.

C. Gardner's pro-pedophilia writings further reveal the bias of PAS.

Gardner's theory makes sense only when viewed through the prism of his open acceptance and endorsement of pedophilia. During his lifetime, Gardner took the following positions:

> There is a bit of pedophilia in every one of us. [Pedophilia] is a widespread and accepted practice among literally billions of people. [I]ntrafamilial pedophilia [incest] . . . is probably an ancient tradition.

---

[12] *See* Christine Lehmann, *Controversial Syndrome Arises in Child-Custody Battles*, PSYCHIATRIC NEWS (September 1, 2000).

Gardner believed sex abuse was not necessarily traumatic. Rather, the determinant as to whether sexual molestation will be traumatic to the child, is the social attitude toward these encounters. "It is because our society overreacts to it [pedophilia] that children suffer."

Children are naturally sexual and may initiate sexual encounters by "seducing" the adult. If the sexual relationship is discovered, "the child is likely to fabricate so that the adult will be blamed for the initiation."

Gardner warned that special care should be taken not to alienate the child from the molesting parent. The child should be told that there is no such thing as a perfect parent. "The sexual exploitation has to be put on the negative list, but positives as well must be appreciated." Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally shunned. The child might be told about other societies in which such behavior was and is considered normal. The child might be helped to appreciate the wisdom of Shakespeare's Hamlet who said, "Nothing's either good or bad, but thinking makes it so...."

And the mother may be to blame for the abuse. "The mother [may be] psychologically gratifying [her own sexually inhibited needs] with the visual imagery that the sex abuse allegation provides." The therapist should encourage the mother to become more sexually responsive. "Her increased sexuality may lessen the need for her husband to return to their daughter for sexual gratification." Or "it may be that one of the reasons the daughter turned toward the father is the impairment of the child's relationship with the mother." "If the mother has reacted to the abuse in a hysterical fashion, or used it as an excuse for a campaign of denigration of the father, then the therapist does well to try and 'sober her up'.... "

The father should be told that he has had bad luck concerning the place and time he was born with regard to social attitudes toward pedophilia. However, these are not reasons to condemn himself.

Child abuse allegations are the "third-greatest wave of hysteria" the nation has seen, following the Salem witch trials and McCarthy's persecution of leftists.

> "One of the steps that society must take to deal with the present hysteria [concerning child sexual abuse] is to 'come off it' and take a more realistic attitude toward pedophilic behavior.... The Draconian punishments meted out to pedophiles go far beyond what I consider to be the gravity of the crime."

Richard A. Gardner, SEX ABUSE HYSTERIA: SALEM WITCH TRIALS REVISITED at 31, 36-37, 118-120 (Creative Therapeutics 1991); TRUE AND FALSE ACCUSATIONS OF CHILD SEX ABUSE, at 537, 549, 572, 576-77; 579-80, 585, 594-95, 670-72 (Creative Therapeutics 1992); CHILD CUSTODY LITIGATION: A GUIDE FOR PARENTS AND MENTAL HEALTH PROFESSIONALS at 93 (Creative Therapeutics 1986); *Modern Witch Hunt—Child Abuse Charges*, THE WALL STREET JOURNAL, February 22, 1993.[13]

Seen in the context of Gardner's aberrant beliefs, the bias and the danger of PAS is obvious. Many theories have been advanced to explain the popularity of the theory among family law judges, most of whom are probably ignorant of its origins. But those theories are irrelevant here. Whatever the basis for the acceptance of PAS, there is no justification for

---

[13] Collected in Overview of Dr. Richard Gardner's Opinions on Pedophilia and Child Sexual Abuse, found at www.leadershipcouncil.org/1/pas/RAG.html.

any court's reliance on it. Nevertheless, in the past 10 years, the popularity of PAS has soared, and the shocking practice of changing of custody as "punishment" for reporting abuse is widespread.

CONCLUSION AND PRAYER

A court violates a parent's fundamental rights to due process and equal protection when it effectively terminates the relationship between the parent and child under the gender-biased Parental Alienation Syndrome without notice to the affected parent or any meaningful opportunity to be heard. In addition, the court tramples on the same fundamental rights of the children whose safety, welfare and preferences are summarily disregarded.

When a child alleges abuse, our courts have an absolute duty, both legal and moral, to investigate those charges. Failure to do so places a potentially victimized child at even greater risk of harm. A court abdicates its duty if it instead relies on "junk" science like PAS. The "best interests of the child" – the legal benchmark in custody decisions – flies out the window, and the child becomes just another pawn in the bitter divorce process.

Amici Curiae, Justice for Children, National Coalition Against Domestic Violence, Parenting

Project, California Protective Parents Association, and Courageous Kids Network, urge this Court to grant certiorari to address the trial court's *de facto* termination of Wendy Titelman's parental rights and make clear that the due process and equal protection violations in this case must not be tolerated.

Respectfully submitted,

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

Dated October 9, 2007.

MOTION FILED
OCT 10 2007
71
153
38
(2)

NO. 07-319

IN THE
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,

v.

ANDREW CHARLES TITELMAN,
Respondent.

On Writ of Certiorari to the
Supreme Court of Georgia

AMICI, THE PROTECTIVE MOTHERS ALLIANCE FOR JUSTICE, STOP FAMILY VIOLENCE, AND BATTERED MOTHERS CUSTODY CONFERENCE, MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

ROMILDA CROCAMO
Counsel of Record
Barbara J. Hart Justice Center
Women's Resource Center
800 James Avenue
Scranton, PA 18510
(570) 342-4077

DIANNE POST
1826 E Willetta St
Phoenix, AZ 85006-3047
602-271-9019

Counsel for Amici

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Amici respectfully move this Court for permission to file the following *Amicus Curiae* Brief. As required by Rule 37(2), consent of all parties was requested and notice was given at least 10 days prior to the due date of the *amici curiae's* intention of filing this brief. Petitioner has consented to the filing of this brief, and Respondent does not consent. Reply letters from counsel for each party are filed with the Clerk.

The *Amici* represented herein have sufficient interest and good reason for presenting an amicus brief. *Amici* further submit that the facts presented in the brief will add relevant information and may be of considerable help and aid to the Court in its consideration of the constitutional issue.

Therefore, Amici pray that the Court grant this motion for leave to file *Amicus Curiae* Brief.

Respectfully submitted,

ROMILDA CROCAMO
Counsel of Record
Barbara J. Hart Justice Center
Women's Resource Center
800 James Avenue
Scranton, PA 18510
(570) 342-4077

DIANNE POST
1826 E Willetta St
Phoenix, AZ 85006-3047
602-271-9019

Counsel for Amici

TABLE OF CONTENTS

Page

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. BIAS AGAINST WOMEN IN THE COURTS ESPECIALLY RELATED TO CHILD CUSTODY JUDICIAL DETERMINATIONS VIOLATES EQUAL PROTECTION UNDER THE 14TH AMENDMENT, DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENT AND THE CONSTITUTIONALLY PROTECTED FUNDAMENTAL RIGHT OF PARENTING. 4

A. Gender bias exists in the courts. 5

B. Discrimination against victims of domestic violence and sex abuse in custody decisions disproportionately impacts women 7

C. The violation of due process and equal protection in the family law courts resulting

in custody of children to abusers is a widespread practice across the U.S. 15

II. PARENTING IS A FUNDAMENTAL RIGHT UNDER THE CONSTITUTION AND DUE PROCESS MUST BE ACCORDED PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION. 21

III. PARENTING IS A FUNDAMENTAL RIGHT UNDER THE CONSTITUTION AND EQUAL PROTECTION MUST BE ACCORDED PURSUANT TO THE 14TH AMENDMENT OF THE CONSTITUTION. 26

CONCLUSION 27

TABLE OF AUTHORITIES

Page(s)

Cases:

Campbell v. Burt, 949 F.Supp. 1461, 1466 (D. Hawaii 1996) 21, 24, 25

Chrissy F. By Medley v. Mississippi DPW, 780 F.Supp. 1104, 1120 (S.D. Miss. 1991) 25

Duchesne v. Sugarman, 566 F.2d 81, 825 (2d Cir. 1977) 22, 25

Dykes v. Hosemann, 743 F.2d 1488, 1494 (11th Cir.1984) 23

FDIC v. Mallen, 486 U.S. 230, 108 S.Ct. 1780, 100 L.Ed.2d 265 (1988) 25

Hayden v. Grayson, 134 F.3d 449, 453 (1st Cir. 1998) 27

Hebein Ex Rel Berman v. Young, 37 F.Supp.2d 1035 (N.D. ILL. 1998) 24

Hynson v. City of Chester Legal Dept., 864 F.2d 1026, 1029 (3rd Cir.1988) 27

Nicholson v. Williams and Scoppeta, 203 F.Supp.2d 153, (E.D. N.Y, March 18, 2002) 23

Ricketts v. City of Columbia, Missouri, 36 F.3d 775, 781 (8th Cir. 1994) 27

Roberts v. United States Jaycees, 468 U.S. 609, 619-20, 104 S.Ct. 3244, 3250, 82 L.Ed.2d 462 (1984) . . 22

Smith v. City of Fontana, 818 F.2d 1411, 1418 (9th Cir. 1987) 22

Tennebaum v. Williams, 193 F.3d at 594 (2d Cir. 2001) 23

U.S. v. McClelland, 72 F.3d 712, 717 (9th Cir. 1995) 27

Woodrum v. Woodward County, Okl., 866 F.2d 1121 (9th Cir. 1989) 22

* * * * * * *

Constitutional Provisions:

Article IV of the U.S. Constitution 25

Fourth Amendment of the U.S. 25, 26

Fifth Amendment of the U.S. Constitution 5, 21

Fourteenth Amendment of the U.S. Constitution 5, 21, 25, 26

* * * * * * *

Other Authorities:

National Judi al Education Project, Gender Bias Task Forces: Findings & Recommendations, 2006. . . . . 5, 7

Divorce Mediation and Domestic Violence, *Domestic Violence Report* (Civic Research, Inc. Kingston, N.J., Oct/Nov. 1998), at 1. 7

Jaffe, P.G, Wolfe, D., & Wilson, S., *Children of Battered Women.* Newbury Park, CA: Sage, 1990. 8

American Bar Association, Young Lawyer's Division, Center for Child Advocacy and Protection, *Legal Response: Child Advocacy and Protection*, No. 2, P. 1 (June-July 1979); Roy, A Current Study of 150 Cases, *Battered Women: A Psychological Study of Domestic Violence* (1979). 8

EXPOSE The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health Professionals, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999, p. 201. 8

Chesler, Phyllis, *Mothers on Trial The Battle for Children and Custody*, McGraw-Hill Book Company, NY. 1986. 9

Child Custody Determinations among Couples

with a History of Intimate Partner Violence, p. 991, Kenic, Monrary-Ernsdorff, Koepsell, Holt in *Children in the Crossfire*. 9, 10

Outcomes of Visitation and Custody Petitions when Fathers are Restrained by Protection Orders: The case of the New York City Family Courts, Rosen and Sullivan, National Institute of Justice Grant no. 1998- IJ-CS-0021, secondary analysis of data, p. 1054. 10

Child Custody and Visitation Decisions when the Father has Perpetrated Violence against the Mother, Morrell, Dai, Dunn, Sung, Smith, National Institute of Justice Grant 1999-WT-VX-0013, *Children in the Crossfire*, Sage, p. 1076. . . 12

Violence Against Women, No. 11, Volume 8, Sage, 2005, Child Custody Mediation in Cases of Domestic Violence, Johnson, Saccuzzo, Koen, p. 1022, National Institute of Justice Grant No. 1999-WT-VX-0015. 13

Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, Jaffee, Crooks, and Poisson, 57 Juvenile and Family Court Journal Fall 2003. 13

Geraldine Stahley, Oral presentation at the Western Psychological Association meeting in Canada, May 2003. 14

Bancroft, Lundy R., *Understanding the Batterer in Custody and Visitation Disputes*, 1998. *Placing*

Children at Risk: Questionable Psychologists and Therapists in the Sacramento Family Court and Surrounding Counties, investigative reporter Karen Winner, May 15, 2000. 15

Palmer, Brown, "Responding to Disclosures of Familial Abuse: What Survivors Tell Us", *Child Welfare Journal of Policy, Practice and Program*, Mar/Apr 1999. 15

Hofford, Merry, M.A. et al. "Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice." *29 Family Law Quarterly*, 1995, 201-02. 16

Wellesley Center for Women, Women's Rights Network, Wellesley College. 16

Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, Arizona Coalition Against Domestic Violence, June 2003. . . . . 16, 17

Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community, Women's Law Project, Philadelphia, Pa, April 2003. 18

www.courtinfo.ca.gov/programs/cfcc/programs/description/flic.htm 21

INTEREST OF *AMICI CURIAE*[1]

The Protective Mothers Alliance for Justice mission is to bring justice across the United States to mothers who have been battered or whose children have been abused by the father and who now must confront the father in legal proceedings regarding custody or visitation. Our objectives are to expose current miscarriages of justice, and to build public pressure on courts to make reforms, specifically, reforms that will make courts work in fair and objective ways in these kinds of legal proceedings, will hold courts accountable, and will require courts to protect children from being abused. We strive to prohibit the punishment of mothers for efforts to protect their children. The most common punishment currently is the transfer of custody of the children to the abusive father, but some mothers are also being fined or jailed.

We consider this issue of the utmost urgency. Not only are thousands of children per year being endangered or harmed by such judicial actions, countless additional children are being put at risk because their mothers become afraid to take steps

---

[1] Pursuant to this Court's Rule 37.6, *amici curiae* represent that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

to protect them once they become aware of the retaliatory actions by courts against mothers.

Stop Family Violence (SFV) is a project of the Tides Center, a 501(c)(3) non profit located in San Francisco, CA. SFV is a grassroots activist organization that works to ensure safety, justice, accountability and healing for people whose lives are affected by violent relationships. Stop Family Violence's mission is to organize and amplify our nation's collective voice against family violence.

We urge you to grant the petition for writ. Stop Family Violence is contacted by an average of three mothers each week who have lost child custody to fathers who abuse the mother and/or the children. We know of several situations where protective mothers have been jailed for speaking out against the court's actions in an effort to protect their children; of numerous others who have been gagged and forbidden to speak about the abuse under threat of incarceration. We know of numerous situations where protective mothers have been coerced into signing stipulated agreements against their children's interests under threat of incarceration or full loss of custody. We know of countless situations where children have been removed from the protective parent by *ex parte* proceedings, with blatant disregard for due process. This is a widespread national problem for which there has been insufficient concern or remedy.

In a few counties of Illinois, alone, the Illinois Coalition for Family Court Reform (ICFCR) has documented more than 225 cases where custody

was awarded to abusive husbands/fathers. Ms. Titelman's case fits the pattern of practice, lack of due process, and violation of constitutional rights and civil rights that we are experiencing in Illinois, and across the country.

The Battered Mothers Custody Conference purpose is to draw public and media attention to the bias and injustice faced by battered women and their children in the family court system in this nation; to enlighten court personnel, legislators, government agencies, and policy makers about these realities and to press for change; to educate professionals; and to facilitate communication and collaboration among experts, scholars, professionals, advocates, and lay persons who work on behalf of battered mothers and their children.

The features of the Titelman case are prototypical of the cases to which the Battered Mothers Custody Conference is directed, cases in which battered women, in their attempts to gain legal protections for themselves and their children, are penalized by the family court/divorce court systems for raising allegations of intimate partner abuse or child abuse. In many cases, including the Titelman case, these penalties are as severe as being deprived of all meaningful contact with their children.

SUMMARY OF ARGUMENT

Because of persistent discrimination against women in the courts, especially battered women and in cases where allegations are made of sexual

abuse of children, a pattern and practice exists in the family courts of the United States of denying the constitutionally protected rights of due process, equal protection and parenting. Such discrimination is not limited to the instant case but is widespread and long-term across the States. The pattern robs thousands of protective parents of contact with their children and their constitutionally protected rights. Even more painfully, the practice puts thousands of children directly in harms way by forcing them into the custody of the very person who abused them.

Amici urge the Court to grant certiorari on this case to hear it on its merits because of the serious, pervasive and longstanding legal issues and the ultimate impact on protective parents and children affecting their health and their lives.

ARGUMENT

I. BIAS AGAINST WOMEN IN THE COURTS ESPECIALLY RELATED TO CHILD CUSTODY JUDICIAL DETERMINATIONS VIOLATES EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT, DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS AND THE FUNDAMENTAL CONSTITUTIONALLY PROTECTED RIGHT OF PARENTING.

The violation of constitutionally protected due process and equal protection as well as the fundamental right of parenting is not an isolated phenomena in this country. It is in fact a national

tragedy that has gone unremedied for at least 30 years. Especially in situations as this petitioner, when there is proof of sexual abuse against the children, the mother's rights and most importantly the children's protection are ignored.

A. Gender bias exists in the court.[2]

Since the 1990's, a series of gender bias studies were done around the country. The findings of the thirty-one state and five federal task forces that have reported over the last fifteen years are similar and disturbing. They report that gender bias in the courts does sometimes affect men, but that its victims are overwhelmingly women; that male judges and lawyers of all ages are largely unaware of the experiences and perceptions of their female colleagues; and that the disrespect and devaluation experienced by white women is even more pronounced for women of color. In the words of the New York Task Force on Women in the Courts, "Gender bias against women litigants, lawyers and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity." There is a growing tendency to award custody to the wealthier parent rather than to award child support. Given women's and men's unequal earning power, this constitutes a paternal preference. There is also significant indifference to spouse abuse in custody cases. Many judges do not understand why a man who beats his wife but not

---

[2] National Judicial Education Project, Gender Bias Task Forces: Findings & Recommendations, 2006.

his child should not be awarded custody, and erroneously assume that husbands' violence against their wives ends with divorce. Judges sometimes assume that women are making false allegations of child sexual abuse to gain an advantage in custody disputes.

Domestic violence continues to be an area in which women experience significant bias, despite major statutory reforms to provide them with civil and criminal protections. Courts show little understanding of the circumstances under which battered women survive and the ways in which the dynamics of violence, economic dependence, lack of support from family and community, and fear of the batterer combine to keep women in these situations.

The gender bias task forces' documentation of state courts' failure to treat gender-based violence seriously was the basis for a 1991 Senate report recommending adoption of the Violence Against Women Act, which treats these crimes as a civil rights violation. Pointing to the "sad fact" that "law reform has failed to eradicate the stereotypes that drive the system to treat these crimes against women differently from other crimes," the Senate acknowledged the need for a federal remedy for women victims. [S. Rep. No. 102-197, at 47-48 (1991)].[3] Unfortunately, the civil rights remedy for

---

[3] National Judicial Education Project, Gender Bias Task Forces: Findings & Recommendations, 2006.

battered women was declared unconstitutional by the Supreme Court. [4]

B. Discrimination against victims of domestic violence and sex abuse in custody decisions disproportionately impacts women.

Domestic violence is a factor in 50-80% of divorce cases in the U.S., depending on the jurisdiction.[5] The victims of domestic violence are overwhelmingly women and children, approximately 95%.[6] Therefore, practices in the divorce courts disproportionately impact women, especially battered women. In addition, a high correlation has been shown between spouse abuse, child abuse and incest[7] putting at risk the children of these battered women. Nor is child sexual abuse rare in the U.S. "The Honorable David Paterson, a state senator from New York, testified that one of every three young girls and one of every five boys become victims of child sexual abuse and that a

---

[4] *U.S. v. Morrison*, 529 U.S. 598 (2000).

[5] Divorce Mediation and Domestic Violence, *Domestic Violence Report* (Civic Research, Inc. Kingston, N.J., Oct/Nov. 1998), at 1.

[6] Jaffe, P.G, Wolfe, D., & Wilson, S., *Children of Battered Women*. Newbury Park, CA: Sage, 1990.

[7] American Bar Association, Young Lawyer's Division, Center for Child Advocacy and Protection, *Legal Response: Child Advocacy and Protection*, No. 2, P. 1 (June-July 1979); Roy, A Current Study of 150 Cases, *Battered Women: A Psychological Study of Domestic Violence* (1979).

high percentage of those most afflicted repeat the cycle." [8]

As early as the 1960s, when fathers asked for custody of the children, they won 70% of the time. Fifty-nine percent of the judicially successful fathers and 50% of the privately successful fathers had physically abused their wives or initiated a violent divorce. Fathers who kidnapped their children were not punished while 80% of women who did were imprisoned, fined or custodially punished. Having more money was one of the factors that allowed fathers to win but 62% of the fathers used violence to win custody. Courts then rubber stamped this behavior. These fathers had not been any more involved in child care or housework than any other father. The standard for evaluating mothers and fathers was very different.[9]

Pursuant to the National Institute of Justice Grant number 2000-WT-VT-0016 entitled "History of Intimate Partner Violence and the Determination of Custody and Visitation among Couples Petitioning for Dissolution of Marriage" many academic studies were done and the results published in Violence Against Women, No. 11,

---

[8] *EXPOSE The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health Professionals*, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999, p. 201.

[9] Chesler, Phyllis, *Mothers on Trial The Battle for Children and Custody*, McGraw-Hill Book Company, NY. 1986.

Volume 8, Sage, 2005, p. 991 entitled *Children in the Crossfire.*

In one study, the researchers looked at spouse abuse issues in all divorces in Seattle, Washington from 1998-1999. They did not look at child abuse issues. They found that mothers who suffered interpersonal violence (IPV) were no more likely to be awarded custody than other mothers without IPV. Fathers with known histories if IPV were more likely to be denied visitation, but that still only represented 17% who were denied visitation. In half of the cases with court or police documented domestic violence (DV), that history was not in the divorce file.

The study concluded that interpersonal violence (IPV) was ignored even with a documented, substantiated history and strong protections for the children were not put into place.[10] As many as 20% of the victims reported returning to the abuser because of threats made about taking the children.

A second study looked at outcomes when the fathers had protection orders against them.[11]

---

[10] Child Custody Determinations among Couples with a History of Intimate Partner Violence, p. 991, Kenic, Monrary-Ernsdorff, Koepsell, Holt in *Children in the Crossfire.*

[11] *Outcomes of Visitation and Custody Petitions when Fathers are Restrained by Protection Orders: The case of the New York City Family Courts*, Rosen and Sullivan, National Institute of Justice Grant no. 1998- IJ-CS-0021, secondary analysis of data, p. 1054.

There was no statistical difference in outcomes for fathers and mothers when filing custody or visitation petitions. They found that contrary to popular thought, fathers restrained by orders of protection (OPs) were more likely to obtain visitation orders than not (64%). More than 50% threatened to kidnap the child, 40% threatened to kill the mother and in 44% of the cases, the children were physically involved in the violence.

The researchers found that the State of New York could and did charge mothers with failure to protect if children witnessed violence. But if the mothers separated from the fathers to avoid the child witnessing violence, fathers asked for and got custody or visitation and the children and mothers were abused yet again during the exchanges and visits.

This is precisely the situation with Titelman. If she had not reported the abuse and acted to protect the children, she would have been liable for failing to protect the children. But when she took action to protect them, she was arrested and punished by losing all contact with the children thus putting them into even greater danger.

It was found that no fathers restrained by OPs who asked for custody and appeared at trial were denied custody or visitation in family court. Thus safety considerations were obviously not being considered in custody determinations.

Paradoxically, the data showed that fathers were more likely to get visitation when an OP was

granted (64%) than when it was dismissed (49%). Also in 58% of those cases, father's custody petition was also dismissed indicating that fathers filed custody to coerce mothers into dropping OP petitions. If mothers want to protect their children, they have to not protect themselves. Even when there were two orders – OP and visitation order – the OP was limited by the visitation order rather than the visitation order being limited by the OP. Thus the "right" of the father for visitation was a higher ranking right than the right of the mother or child to be protected from physical violence. The researchers concluded that the courts are failing to protect women from victimization and children from exposure to violence. The court itself may become the instrument by which abusive fathers continue to have contact with and abuse partners.

One study directly studied the effectiveness of statutes mandating that the court have a presumption against custody to the perpetrator and that judges have education about the issue of domestic violence.[12] When there was a presumption against custody to a perpetrator, more custody decisions gave custody to the mother unless there was also a friendly parent provision and a presumption for joint custody in the law. Under those conditions, courts granted joint custody twice as often in states with a presumption against the

---

[12] Child Custody and Visitation Decisions when the Father has Perpetrated Violence against the Mother, Morrell, Dai, Dunn, Sung, Smith, National Institute of Justice Grant 1999-WT-VX-0013, *Children in the Crossfire*, Sage, p. 1076.

perpetrator but also competing presumptions of friendly parent and joint custody as those with no presumption against DV at all. So in those states, it appears that reporting DV punishes the victim of abuse rather than protects her.

Some judges actually believed there was no situation that could justify restricting the fathers visitation. Thus the right to life and security of the mother and child were violated as the fathers parental rights were elevated into a higher position.

The situation is no better with mediators who work in family court. Mediators failed to recognize and report DV in 57% of the cases, even when DV was on the court screening form. The screening form itself failed in 15% of the cases. Even when there was a protection order, mediators recognized DV in only 49% of the cases. Even when there was both DV in the court screening form and a protection order, mediators recognized DV in only 49% of the cases.[13] This level of failure cannot be put down to ignorance or negligence but must be willful disregard.

Contrary to common belief, violence against a woman and her children does not stop when she leaves the abuser. In fact separation often leads to an escalation of the violence and greater danger. In

---

[13] *Violence Against Women*, No. 11, Volume 8, Sage, 2005, Child Custody Mediation in Cases of Domestic Violence, Johnson, Saccuzzo, Koen, p. 1022, National Institute of Justice Grant No. 1999-WT-VX-0015.

spite of that, the father-child relationship is privileged as more important than the danger to the child.[14] Often the request for custody of the children has more to do with attempting to force the mother to reconciliation or to punish her for refusing than over care about or concern for the child's best interest.

In fact, research has found that 75% of men who abuse their female partner also abuse their children. Girls run a higher risk – they are 6.5 times more likely to be sexually abused than girls from non-violent homes. They are particularly susceptible to sexual abuse when the marriage is ending. The belief that mothers and children make false allegations of child sexual abuse during custody proceedings has been shown to be simply not true. Mothers were no more likely than fathers to make false allegations. In fact, 21% of father's allegations were shown to be false compared to only 1.3% of mothers.

One national survey of non-abusive parents showed that 65% of the parents trying to protect their children were advised by attorneys, mediators, court personnel, advocates, police, psychologists, family court advisors, other protective parents and even one judge not to report the abuse. Although 90% of the non-abusive

---

[14] Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, Jaffee, Crooks, and Poisson, 57 Juvenile and Family Court Journal Fall 2003.

mothers reported that they began with custody of their children, by the end of the court process 80% of the identified offender fathers had custody, 29% of the mothers were placed on supervised visitation, and 29% of the mothers had no contact at all with their children. In most cases, the fathers who plea for sole custody are the same fathers who abuse their wives and children.[15] This is a clear denial of due process, access to court and the right to petition the courts for the protection of fundamental rights.

While one would hope that experts appointed by the court would be aware of the issues involved in the best interest of the child, this is simply not so. Forty percent of those working in mental health fields in the U.S. have received no training about partner violence and fewer received training about child sexual abuse. A study by Bancroft and Silverman showed chronic problems with custody evaluations done by unqualified evaluators.[16] Evaluators often blame the victim for not leaving the abusive situation and label her as unfit or unstable. They then turn right around and recommend custody to the violent parent. One study gave therapists a case study of an actual domestic violence situation that resulted in the

---

[15] Geraldine Stahley, Oral presentation at the Western Psychological Association meeting in Canada, May 2003.

[16] Bancroft, Lundy R., *Understanding the Batterer in Custody and Visitation Disputes*, 1998. *Placing Children at Risk: Questionable Psychologists and Therapists in the Sacramento Family Court and Surrounding Counties*, investigative reporter Karen Winner, May 15, 2000.

murder of the woman. The study found that 91% of therapists failed to even identify the abuse. Of the 9% who recognized it, 40% of them did not think it was important.

Studies have also shown that even when confronted with the child's disclosure of abuse, less than 50% of mothers took action. For those mothers who did, the most frequent action was a divorce. However, that is precisely when the court and child protective agencies do not believe the mother or child. Rather than understanding that abuse motivated the divorce, they believe the divorce motivated the abuse allegation. Those children who were believed about the abuse suffered much less emotional and behavior problems. But when the mother believes the child and takes action, she is at most risk of losing custody or visitation all together.[17]

Mothers are in a no win situation - if they do not protect the child, they are accused of failing to protect but once a divorce is filed, suddenly the viewpoint is reversed and if she tries to protect, she is instead accused and likely to lose her children.[18]

C. Violation of due process and equal protection in the family law courts resulting in custody

---

[17] Palmer, Brown, "Responding to Disclosures of Familial Abuse: What Survivors Tell Us", *Child Welfare Journal of Policy, Practice and Program*, Mar/Apr 1999.

[18] Hofford, Merry, M.A. et al. "Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice." *29 Family Law Quarterly*, 1995, 201-02.

to abusers is a widespread practice across the U.S.

Several qualitative studies have been done to document this pattern of bias against mothers and the states failure to protect children. Battered Mothers Speak Out, a report published by the Battered Mothers Testimony Project (BMTP) at Wellesley College in November 2002[19] documents the human rights violations battered women suffer when they fight against their abusers for custody of their children in the Massachusetts family courts. Since 1999, project co-directors interviewed 40 battered mothers with experience in 11 of Massachusetts' 14 counties. Said Cuthbert, "Despite their diversity, the problems that they identified were remarkably similar. The courts fail to protect battered women and children by issuing child custody rulings that endanger them. Family courts give custody to batterers. Child abusers are given unsupervised visitation. Women and children are required by the courts to interact with their abusers with no protection."

In court, women are often at a disadvantage. A law that could provide critical protection—the Massachusetts Presumption of Custody Law that affirms that the children's best interests are not served when they are placed in the custody of a batterer or child abuser is not regularly enforced. Women usually receive custody in uncontested cases, but the 1989 gender bias study commissioned

---

[19] Wellesley Center for Women, Women's Rights Network, Wellesley College.

by the Massachusetts Supreme Judicial Court found that fathers win three times more often than mothers in contested custody battles.

In a very different state, the Arizona Coalition Against Domestic Violence carried out a two year study of 57 women who had gone through a custody battle in Arizona family courts.[20] The Arizona study's main findings were:

a. In spite of evidence of violence against women and/or their children, (and with such violence documented in 63% of the cases) the courts consistently ordered sole or joint custody to perpetrators in 74% of the cases in Maricopa County and 56% of the cases in the other counties combined.
b. Income level, which was highly skewed towards father, seemed to have the most impact on the ultimate custody decision.
c. Having a custody evaluator more likely resulted in the mother losing custody.
d. By and large, the systems of control the perpetrator established pre-divorce, including physical and sexual violence and child abuse, were maintained post-separation with the added ability to use the court system to abuse the victims.
e. Having an order of protection had no impact on the final custody decision;

---

[20] Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, Arizona Coalition Against Domestic Violence, June 2003.

contrary to Arizona law, the courts simply ignored the documented existence of domestic violence.

f. The courts ignored well-known research and federal standards as 100% of the victims were ordered to go to mediation or a face-to-face meeting with the abuser.
g. A large number of perpetrators had weapons or used alcohol or drugs when with children.

In the same year, a study was released regarding the domestic relations division of the Philadelphia Family Court.[21] While the methodology was different, the findings were equally horrific.

In California, the California Protective Parents Survey project collected questionnaires nationally from September 2001 to December 2004 and netted 164 responses nationally and 93 in California. For both groups, 83% of the primary caretakers had primary custody at the beginning of the litigation. Mothers initiated litigation in 63% of the cases in CA and 61% of the cases nationwide. The main issue was child custody and visitation (94%). The mothers alleged the fathers had substance abuse issues (69% CA, 65% US); a criminal history (55% CA, 52% US); the mother was a victim of domestic violence (88%); allegations of child abuse arose

---

[21] Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community, Women's Law Project, Philadelphia, Pa, April 2003.

during the litigation (91%), 71% was physical abuse and 65% sexual; and the father threatened to take the children if the mother left (74% CA, 78% US). Medical or physical evidence was submitted by the mother in 60% of the cases, other corroboration was presented in 80%, and the child identified the father as the perpetrator (74%). The evidence was ignored by the court (97%). Though 88% of the mothers reported they were victims of domestic violence, the mother was advised not to mention domestic violence or child abuse in court (67% CA, 64% US) and was advised by her attorney that pursuing court action would harm the case (62% CA, 57% US). Custody was changed over mother's objection or in an emergency hearing (70%). The most potent reason for custody to change to the father was an allegation of child abuse (67% CA, 62% US).

After litigation, 19% of the mothers had primary custody yet 71% of the children continue to report abuse by the father. The mother was herself restricted from all contact with the child at some point (60% CA, 55% US). She was put on supervised visitation at some point (51% CA, 44% US). Parties were ordered to mediation (91% CA, 75% US). A child custody evaluator was selected by the court (86%). PAS was specifically used against mother (40% CA, 41% US) or Gardner quoted (16%) or the term "alienator" used (27% CA, 29% US). The mothers felt the result was due to discrimination (97%), unethical behavior (74-80%), gender bias (68-70%), and fathers having more money (64-65%). Though nearly a third of mothers spent over $90,000 on the case and had to file

bankruptcy, for nearly 80% of the litigants, the case continues. The mothers felt due process was violated by the inability to present her case, inadequate or incomplete transcripts, insufficient time, no attorney, mother threatened, *ex parte* hearings, refusal to allow mother to see evaluations and transcripts, and no reporter at the hearing so an appeal was not possible (55-88%).

The resulting situation has left fathers with full custody even when he was identified as the perpetrator of violence (41% CA, 40% US); mother has no contact with the child (22% CA, 21% US); mother has supervised visitation (18%); they have joint custody (22%); mother has primary custody (16% CA, 19% US), father has supervised visitation (7%). The children continue to report abuse (74% CA, 71% US) but mother is unable to protect the child (82%) because she fears that reporting abuse will result in her contact with the child to be terminated (56% CA, 60% US). In California, in 85% of family law cases, at least one party does not have an attorney. [22]

These studies are from such disparate states as Massachusetts, Arizona, Pennsylvania and California as well as national data. Yet the findings are disturbingly similar. Documented domestic violence and child abuse is ignored, due process is violated, and discrimination is rampant. This deep and broad denial of the rule of law must

---

[22] www.courtinfo.ca.gov/programs/cfcc/programs/description/flic.htm

be rectified by the highest court or make a mockery of justice.

II. PARENTING IS A FUNDAMENTAL RIGHT UNDER THE CONSTITUTION AND DUE PROCESS MUST BE ACCORDED PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION.

A mothers' right to conceive and raise her children is one of the "basic civil rights of man".(sic) A mothers' right to retain custody over and care for her children and to rear her child as she deems appropriate is one of the most fundamental rights in and to our society. (*Campbell v. Burt*, 949 F.Supp. 1461, 1466 (D.Hawaii 1996)). In addition, both a mother and a child have a constitutionally protected liberty interest in the companionship and society of their relationship. (*Woodrum v. Woodward County, Okl.*, 866 F.2d 1121 (9th Cir. 1989)). This interest in familial integrity has long been recognized by the United States Supreme Court, which stated in *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20, 104 S.Ct. 3244, 3250, 82 L.Ed.2d 462 (1984), "Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom we share not only a special community of thoughts, experiences, and beliefs but also distinctive "personal aspects of one's life." More recently, the Ninth Circuit Court of Appeals recognized that the right to familial integrity extends to both the parent and the child when it stated: "The companionship and nurturing interests

of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship." (*Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987)). Other federal circuits also recognize that the right to familial integrity is shared by both parents and children. (*Duchesne v. Sugarman*, 566 F.2d 81, 825 (2d Cir. 1977)). 'This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children. It is the interest in the companionship, care, custody and management of his or her children, and of the children in not being dislocated from the emotional attachments that derive from the intimacy of daily association with the parent.". In this particular case, the child's rights to their mother's association have been violated as well as the mother's rights to the children's. However, as the research above shows, often the mother who alleges domestic violence or child abuse ends up losing custody all together and may never see her children again or can only see them in very restrictive situations.

Before a mother or child is deprived of a protected liberty interest, he or she "must be afforded an opportunity for some kind of hearing, except for extraordinary situations where some valid governmental interest is at stake that justifie[s] postponing the hearing until after the event." *Dykes v. Hosemann*, 743 F.2d 1488, 1494 (11th Cir.1984). At the very minimum, due process requires timely notice in advance of a hearing in which parents' rights to custody are at stake.

Dykes, 743 F.2d at 1494. Yet in this case as is common in so many cases, hearings were held with 24 hour notice and *ex parte* hearings were common. The common research finding that custody decisions are often made after 5-10 minute hearings is shocking when at issue is the safety and often literally the life of a child.

An extraordinary situation must exist before a child can be taken from a mother without a prior hearing. Such emergency situations "mean circumstances in which the child is immediately threatened with harm" and not "[t]he mere possibility of danger." (*Nicholson*, 203 F.Supp.2d at 237 (quoting *Tennebaum v. Williams*, 193 F.3d at 594 (2d Cir. 2001). If the danger is not imminent, then there is no excuse to deny a hearing with participation from both sides. Thus the court violated the mother and children's due process rights when taking the children from her when in fact she was protecting the children and when so severely restricting her visitation rights as to in fact make them impossible. Again this pattern emerges again and again in the stories of custody cases across the nation. Penniless mothers who have never abused their children are forced to pay large sums of money to supervisors, evaluators, parenting coordinators and assorted court adjunct personnel for the "right" to see their own children.

Even in the rare situations when a mother is not entitled to prior judicial review, "their parental due process rights are merely postponed, not nullified", and such mothers are "entitled to prompt post-deprivation judicial review." (*Campbell v.*

Burt, 949 F.Supp. 1461, 1467 (D.Hawaii 1996)). The cases vary on what they say is prompt. The Fourth Circuit stated that a delay of 72 hours is on the outer limits. (*Campbell*, 949 F.Supp. at 1467). The *Campbell* court held that a one-week delay violated procedural due process. (*Campbell*, 949 F.Supp. at 1468; *see also Hebein ex re Berman v. Young*, 37 F.Supp.2d 1035 (N.D. ILL 1998). In this case it has been five years. Again this is not uncommon in cases that continue for years bankrupting the protective parents.

The standard for determining if due process is violated requires the court to weigh "'the importance of the private interest and the harm to this interest occasioned by delay; the justification offered by the Government for delay and its relation to the underlying governmental interest; and the likelihood that the interim decision may have been mistaken.'" (*Campbell*, 949 F.Supp. at 1468 (quoting *FDIC v. Mallen*, 486 U.S. 230, 108 S.Ct. 1780, 100 L.Ed.2d 265 (1988)). In weighing these interests "[i]t is clear that the private, fundamental liberty interest involved in retaining the custody of one's child and the integrity of one's family is of the greatest importance." (*Duchesne v. Sugarman, supra*) holding that a 36 month delay violated due process). The private interest in these cases is the most important one can imagine – contact with ones own child. Many parents value their children more than life itself. Yet again and again as research has shown and literally hundreds of actual cases have demonstrated, protective parents who act in the most basic ways to protect their children

are not only prohibited from doing so but are punished by the courts for trying.

Inherent in all of these due process rights is the right of an individual to have adequate, effective and meaningful access to court procedures. This right of access is sometimes found to be grounded in Article IV of the Constitution and sometimes under the Fourteenth Amendment due process clause. (*Chrissy F. By Medley v. Mississippi DPW*, 780 F.Supp. 1104, 1120 (S.D. Miss. 1991). "The right to present a claim to a court of law is basic to our system of government, and is, consequently, one of the most fundamental rights protected by the United States Constitution." (*Medley*, 780 F.Supp. at 1119.231). In this case by ordering a half million dollar bond, the Georgia court has effectively prevented the petitioner from having adequate, effective or meaningful access to court procedures. When a litigant is advised not to tell the court about violence toward herself or a child, that is denial of access to court. When a litigant is prohibited from filing motions about violence against her or the child, that is denial of access to court. When judges refuse to listen to documented proof of domestic violence or child abuse, that is denial of access to court. Access to court must mean more than being able to walk through the door. It must mean being heard. In family law courts today, allegations of domestic violence and child abuse are not being heard. In spite of state law, in spite of education, in spite of a Congressional resolution, in spite of the National Council of Juvenile and Family Court Judges, in spite of the American Bar Association, judges

routinely refuse to hear or credit violence against women and children.

III. PARENTING IS A FUNDAMENTAL RIGHT UNDER THE CONSTITUTION AND EQUAL PROTECTION MUST BE ACCORDED PURSUANT TO THE 14TH AMENDMENT OF THE CONSTITUTION.

A mother and child must be treated equally under the Fourth, Ninth, and Fourteenth Amendments to the U.S. Constitution. Treating them differently under a state law or practice because of their status as victims of domestic violence or treating the mother differently because of her gender violates their rights, unless the state can give an appropriate reason that satisfies the constitutional standard. Distinctions in gender "must serve important governmental objectives and must be substantially related to the achievement of those objectives." *Hynson v. City of Chester Legal Dept.*, 864 F.2d 1026, 1029 (3rd Cir.1988); see *U.S. v. McClelland*, 72 F.3d 712, 717 (9th Cir. 1995). In addition, the analysis of the distinction must not apply "'traditional, often inaccurate, assumptions about the proper roles of men and women,'" and must not allow the distinction to perpetrate "'archaic and stereotypical notions.'" *Hynson*, 864 F.2d at 1029).

Distinctions in the law against women and children who are victims of domestic violence require the state to provide a rational justification of how the legislation or practice is related to legitimate governmental objectives. *McClelland*, 72

F.3d at 717. Although this standard is not as stringent as that for gender distinctions, "the rational-basis standard is 'not a toothless one.'" *McClelland*, 72 F.3d at 717. If the law or policy is stated in a neutral manner and is not discriminatory on its face, the law or policy may still be unconstitutional if it is applied in a discriminatory manner. *McClelland*, 72 F.3d at 716; *Hynson*, 864 F.2d at 1030; *Hayden v. Grayson*, 134 F.3d 449, 453 (1st Cir. 1998); *Ricketts v. City of Columbia, Missouri*, 36 F.3d 775, 781 (8th Cir. 1994)

The court in this case has followed the pattern and practice that has been identified throughout the U.S. This case follows the pattern established by research across the nation that shows clearly that abused women are treated differentially and negatively in court and that abused children are likewise not given the protection that is mandated under state statute and their Constitutional rights.

CONCLUSION

The failure to protect children in the family courts is not a new phenomenon or an isolated one but has existed since at least the 1960s. This failure is not limited to one court or one district or one state but is a national tragedy. The practice continues in spite of law suits and legislation, education and political activism. The result is rampant discrimination against women and children and violation of their most basic human rights to family, to equality, to due process and most importantly to safety. Amici ask this court to

grant the writ of certiorari and hear the case on the merits with oral argument because of its tremendous importance to the health and lives of parents and their children across the country.

Amici Curiae urges this Court to grant certiorari to address the trial court's *de facto* termination of Wendy Titelman's parental rights and make clear that the due process and equal protection violations in this case must not be tolerated.

Respectfully submitted by:

ROMILDA CROCAMO
Council of Record
Barbara J. Hart Justice Center
Women's Resource Center
800 James Avenue, Rear
Scranton, PA 18510
(570) 342-4077

Dianne Post
1826 E Willetta St.
Phoenix, AZ 85006-3047
602-271-9019

Counsel for Amici

October 11, 2007